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Current Topics.

Sir Arthur Underhill.

THE late SIR ARTHUR UNDERHILL, of whom a brief obituary notice was published in our last week's issue, was throughout his long career engaged chiefly in the practice of conveyancing, which, though it may appear dull and uninteresting to others, never seemed so to him; he was doubtless cheered, as was another famous equity draftsman, by coming across, every now and again, what the latter called a "brilliant deed." That Sir Arthur had a keen sense of humour was abundantly manifested in his book, published last year, bearing the title "Change and Decay," packed with many excellent stories, and having nothing sombre about it save its title; but even into the legal handbooks which he prepared and which proved so useful he would slip in an apt quotation which shed a gleam of humour over the text, and pleasantly lit up the topic under discussion. Readers of his excellent little book on the "Law of Partnership" may remember that in the section where he discusses what matters should be settled by the agreement, he said that "no small amount of skill is required in the preparation of these articles when (as they frequently are) complicated. Indeed, in no branch of drafting (except, perhaps, wills) is the wise saying of Solomon, that 'without counsel purposes are disappointed' more often justified." Could anything be neater or more cheering to the young barrister embarking on the task of draftsmanship?

Law Society Meeting: Defalcation.

LAST Friday week Mr. W. W. GIBSON, President of The Law Society, outlined at a special meeting, held in the Society's Hall, proposals contained in a Bill to be presented to Parliament to prevent the recurrence of cases of defalcation by solicitors. One of the proposals is to the effect that every solicitor when applying for his annual practising certificate shall personally make a declaration stating expressly that he has complied with the Solicitors' Accounts Rules, and that any false statement contained in such declaration shall render him liable to disciplinary proceedings. A further provision, it was said, would extend the cases in which the Registrar would, subject to appeal to the Master of the Rolls, have a discretion to refuse a practising certificate, and, as an alternative to refusing an application, would give the Registrar an additional discretion to issue a certificate subject to conditions. Such provisions would apply where a solicitor had been invited by the Council to give an explanation in respect of a matter affecting his conduct and had failed to give a sufficient and satisfactory explanation; where an order had been made against a solicitor for a writ of attachment; where a receiving order had been made against him or he had entered into a composition with his creditors or a deed of arrangement; and where a judgment had been given against him which he had not satisfied. It is further proposed to provide for an adjudication in bankruptcy effecting an automatic suspension of a practising certificate until the certificate expired or the adjudication is annulled, power being given to the Registrar and, on appeal, to the Master of the Rolls, to terminate a suspension. During the continuance of a suspension the solicitor would be "an unqualified person" within the meaning of the Solicitors Act, 1932, s. 43. The measure also provides that The Law Society may prohibit the taking of an articled clerk in any cases where there would be discretion to refuse to issue a practising certificate, and shall have power to discharge the articles if a solicitor in any such cases has an articled clerk. The Bill would also confer a power to prohibit a solicitor from employing an unqualified clerk who had been party to the professional misconduct of a solicitor.

Membership Qualification.

THE same measure deals with the qualification of membership of The Law Society. Mr. GIBSON explained that, under the Charter, solicitors who were practising or who had practised were eligible for membership, and that this involved a solicitor in having to obtain at least one practising certificate before he could be elected. There were, he said, many

solicitors on the Roll who did not take out or require a practising certificate—because possibly they were employed as managing clerks on work which did not involve their holding a certificate—and the Council saw no justification for excluding them from membership. An increase in the maximum number of the Disciplinary Committee from seven to nine is also proposed, and power is being sought to impose a penalty, which would go to the Treasury, in addition to striking the name of the offender off the Roll and ordering him to pay the costs of the proceedings. The speaker adverted to the fact that, under r. 2 of the Solicitors (Disciplinary) Rules, 1932, the committee may, in any case where in its opinion no *primâ facie* case is shown, dismiss the application without requiring the solicitor to answer the allegations. It had, he said, been the practice of the committee in any such case, on request, to make a formal order dismissing the application without hearing the applicant in support of his affidavit. In a recent case before the Court of Appeal (see *Re Two Solicitors*, 81 SOL. J. 1000) views were expressed as to whether r. 2 was *intra vires*, and it was proposed to enact that the rules might provide for the adoption of this practice. Another clause of the measure is to the effect that the Council be empowered to appoint committees, at least two-thirds of the members of which must be members of the Council, and to delegate to committees and to fix their numbers and term of office. Mr. GIBSON stated, in conclusion, that a draft of the rules to enforce local minimum charges had been sent to the Master of the Rolls in order that the Council might obtain his views informally as to whether he would be prepared to approve in principle rules on the lines of those submitted. If the reply were favourable the rules would be submitted to the members of the profession for their views. A full report of the proceedings at the meeting appears on p. 98 of the present issue.

Mansion Houses: The National Trust and Entailed Estates.

SOME indication was recently given in these columns of the contents of a Bill the object of which is to make further provision for the transfer of lands to the National Trust with reference to country houses. An extraordinary general meeting of members of the National Trust was recently held at the Royal Institute of British Architects, when it was unanimously agreed to support the measure to be introduced into Parliament in the session of 1938–39, and some further indication of the contents of the measure, as well as of the circumstances leading to its promotion, may be given from the particulars now available. Mr. R. C. NORMAN, vice-chairman of the executive committee, who presided at the meeting just referred to, recalled that under the National Trust Act, 1937, owners of approved country houses are enabled to hand over their property to the National Trust while reserving an interest for themselves and their immediate successors, and providing, in effect, that their later successors can continue in occupation. Some progress, it was said, had been made under the Act, but not a great deal. The speaker thought that it was not to be expected that a scheme of that nature would make rapid progress, but he had no doubt that, as years passed, the scheme would grow and would be a very valuable part of the work of the Trust. Continuing, he said that it had become evident that their object could not be fully secured unless there was power also to deal with entailed estates, because a great many of the more important houses were strictly entailed. In 1937 they had been advised that to attempt to deal with such an important matter in a private Bill would be unwise, and should not be attempted. Since then, evidence had accumulated of the very important work which might be accomplished if strictly entailed estates were included, and their advisers now encouraged them to bring the matter before Parliament. He was hopeful that they would have the goodwill of the Government departments concerned and was sure they would have the support of many members in both Houses of Parliament.

Contents of the Measure.

THE measure, as has already been indicated, relates to (A) the principal mansion house and the pleasure grounds, park and lands, if any, usually occupied therewith; (B) any lands occupied or enjoyed for the purposes of agriculture, sport or afforestation, the acquisition of which, in the opinion of the council of the Trust, is necessary or desirable for preserving the amenities of the principal mansion house; and (C) any lands, buildings and any rights and easements or interests therein which, in the opinion of the said council, it may be desirable to hold for the purposes of endowing the principal mansion house, pleasure grounds, etc., and the grounds for amenity purposes. Under the terms of the Bill a tenant for life is empowered to vest in the Trust property of the foregoing description, either for a consideration or gratuitously. These powers are, however, to be exercised only with the consent of the trustees of the settlement or under an order of the court and after H.M. Commissioners of Works have certified that the principal mansion house is a building of national, architectural, historic or artistic interest. In return for the transfer, the Bill provides that the National Trust shall give a lease to the tenant for life or statutory owner for a term not exceeding 150 years at a nominal rent, and such lease is to be made subject to the settlement affecting the land before vesting in the National Trust. It is proposed to be enacted, moreover, that the lease shall contain proper provisions for the protection of the building, and in particular a covenant by the lessee to admit the public to view such part or parts of the premises at such times and on such terms as may be agreed upon by the National Trust, which will also have the power to determine a lease whenever the entail comes to an end. It is provided that the proposed Act shall extend to the Isle of Man, but not to Northern Ireland.

The Law Association.

THE attention of readers may be drawn to a pamphlet entitled: "A Short History of the Law Association from its Foundation in 1817 to 1938," which has been compiled from the minutes of the association by Mr. E. EVELYN BARRON, M.A., LL.B. The author, who was secretary of the association from 1899 to 1934, traces its history to the present day from 22nd July, 1817, when at a meeting of several members of the profession of attorney and solicitor, held at the London Coffee House, it was resolved that, with a view to provide against occurrences of calamity in private life among members of the profession, a society be established, to be entitled "The Association for the benefit of Widows and Families of Practisers in the Courts of Law and Equity in the Metropolis and its vicinity." Our London readers will be familiar with the excellent work which the association has done since its inception in relieving, so far as its funds allow, cases of distress among those for whose benefit it was founded, and it is unnecessary to enlarge upon the subject here. Nor is it possible within the space at our command to make even passing reference to the more important events in its history which will be found duly chronicled in the publication referred to. It may be noted, however, that at the General Meeting held last May, LORD BLANESBURGH, the president of the association, intimated that its affairs were in a flourishing condition, while the work of relief was never more needed or better carried out than at the present time. It is indicated that in applications for relief, a distinction is made between those whose husbands or fathers were members of the association, and those whose husbands and fathers were never members or who subscribed for a few years and ceased to do so before their death. The funds having been built up by subscribers, the income is primarily devoted to the full and adequate assistance of the former class of case, though non-members' cases are assisted out of surplus income. Subscribers are chiefly drawn from the more successful members of the profession in respect of whom no claim on the

funds is ever likely to arise; but, it is said, exceptions do occur, more usually in the case of a widow or daughter, who, through bad investment or other cause, has lost the fund left by her husband or father for her maintenance. The annual income of the association derived from its invested funds and members' subscriptions for the year 1937–38 was just over £3,600. It is pointed out that the number of solicitors who took out London certificates during the year ended 15th November, 1937, was 5,630, from which it appears that the membership of the association comprises only just over fifteen per cent. of the London solicitors, and the hope is expressed that this proportion will substantially increase.

Planning and Ribbon Development.

In June, 1936, a Town and Country Planning Memorandum set out the joint views of the Minister of Health and the Minister of Transport with regard to the co-ordination of the powers available under the Restriction of Ribbon Development Act, 1935, with those of the Town and Country Planning Act, 1932. A revised memorandum (T. & C.P. 10) intimates that experience has shown that in the main the principles laid down in the former memorandum were sound. In detail, however, they have proved to need alteration, and the revised memorandum has, therefore, been issued. The Ministers concerned are agreed that major roads, which include all roads now or ultimately intended to be 60 feet wide or more and along which individual access will normally be restricted, should ordinarily be dealt with under the Act of 1935 in preference to reservation by planning schemes. The Minister of Transport, it is said, attaches great importance to the restriction of access along such roads, and he is not ordinarily prepared to contribute towards the cost of the construction of a new road or the improvement of an existing road unless he is satisfied that in appropriate cases the highway authority intends to limit access, from individual buildings as well as by streets, to such extent as may be requisite in the interest of traffic and public safety, paying compensation where necessary. It appears that planning schemes are often ready for submission to the Minister of Health before standard widths in the area have been approved. Prior to such approval there is, in general, no protection for the line of a proposed new road under the Act of 1935, and the memorandum states that there is consequently advantage in protecting the line, or approximate line, of any such road under planning powers until the standard width has been approved. Where, however, a widening only is proposed and the road is one to which s. 2 of the Act of 1935 is, or has been made, applicable, development can be controlled even if no standard width has been approved. Concurrent control of development will, it is said, be available under the Town and Country Planning Act, and there may be advantage in showing the widening in the planning scheme. In regard to minor roads, the reservation of land will continue to be the responsibility of the planning authority. Even where such roads are as wide as the minimum standard of 60 feet, the machinery of planning, it is intimated, should be preferred to the Act of 1935, since the scheme will enable the authority to recover a proportion of the costs of construction from the frontagers.

Restriction of Access by Streets and Building Lines.

In addition to the reservation of land for new streets and widenings, the memorandum is concerned with the restriction of access by streets to classified roads, or roads declared by the Minister of Transport to be intended to be classified roads. These, it is said, will continue to be a matter for the schemes, and planning authorities are advised to ascertain in advance the requirements in this respect of the highway authorities, notwithstanding that the last-named have their own powers under the Restriction of Ribbon Development Act. Compensation for restrictions can be excluded under planning, and the location of new street entrances is of vital importance to the authority responsible for controlling development behind the main road. It is further stated that building lines for major roads should take account of the fact that the highway authority will presumably restrict access to the road from individual buildings. The memorandum emphasises, in conclusion, that, though the major roads will ultimately be dealt with under the Act of 1935, the necessity for considering them in relation to the general planning of the area is not thereby diminished. The normal procedure should still be for the highway authority to confer with the planning authority as to the general proposals for controlling development, and then to arrange its proposals accordingly. It has not been possible within the space available to deal with the subject in detail; enough will, however, have been said to indicate some of the problems arising from the partial overlapping of the functions of the planning and the highway authorities so far as the powers conferred on the latter by the Act of 1935 are concerned, and to show how the difficulties occasioned by the fact that the central departments for these authorities are not the same are being surmounted. Readers desiring further information must be referred to the memorandum itself, which is published by H.M. Stationery Office, price 1d. net.

Recent Decisions.

In *Poliakoff* v. *News Chronicle Ltd.* (p. 94 of this issue), the Court of Appeal (MacKinnon and Goddard L.JJ., and Lewis, J.) declined to grant a new trial of an action which was heard before Lord Hewart, C.J., and a special jury and in which the plaintiff claimed damages for alleged libel. It was intimated that if there had been any misdirection, it only resulted in the jury saying: verdict for the defendants instead of: verdict for the plaintiff for one farthing, or at the outside forty shillings. No substantial wrong or miscarriage had been occasioned: see R.S.C., Ord. 39, r. 6.

In *Armour* v. *City of Liverpool* (*The Times*, 2nd February), Simonds, J., held that the defendant corporation had power, as incidental to the carrying on of its tramway undertaking, to contribute to a fund which had been raised and was maintained by voluntary subscriptions for the benefit of the tramway employees, but that there was no contract to make such contributions existing between the corporation and the employees.

In *Lowry* v. *Consolidated African Selection Trust, Ltd.* (p. 94 of this issue), the Court of Appeal (Sir Wilfrid Greene, M.R., and Finlay and Luxmoore, L.JJ.) reversed a decision of Macnaghten, J., and restored that of the General Commissioners for the purpose of the Income Tax Acts to the effect that a company was entitled to deduct from its profits and gains for the purpose of its income tax assessment the amount representing the benefit derived by its employees by the issue of ordinary shares to them for 5s. a share, the market value of such shares being £2 3s. 9d. See *Usher's Wiltshire Brewery Co.* v. *Bruce* [1915] A.C. 433.

The Council of the Law Society.

We publish elsewhere in this issue some comments by a contributor on a pamphlet issued by the Associated Law Societies of Wales on the subject of the present methods of election to the Council of The Law Society. Were the duties of the Council limited to the internal affairs of the profession, the democratic constitution suggested would possibly meet with support, but it must be remembered that their duties, both by Statute and by usage, extend far beyond these confines. It can be said for the present system that, over a number of years, it has enabled and encouraged solicitors of great ability, wide experience, and a high sense of duty to give their services on the Council. The Council will, no doubt, give to the suggestions contained in the pamphlet the careful consideration which is due to them in view of the responsible source from which they come.

Criminal Law and Practice.

SHARE HAWKING.

An interesting decision is now available interpreting the share-hawking provision in s. 356 (1) of the Companies Act, 1929. That sub-section simply provides that it shall not be lawful for any person to go from house to house offering shares for subscription or purchase to the public or any member of the public. Sub-section (7) provides: "In this section, unless the context otherwise requires, the expression 'shares' means the shares of a company, whether a company within the meaning of this Act or not, and includes debentures and units . . ." Under s. 380 (1) "debenture" is defined as including debenture stock, bonds, and any other securities of a company, whether constituting a charge on the assets of the company or not. Under sub-s. (5) if any person acts, or incites, causes or procures any person to act in contravention of this section he shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding £200, or to both, and in the case of a second or subsequent offence to imprisonment for a term not exceeding twelve months or to a fine not exceeding £500, or both. Under sub-s. (6), where a person convicted of an offence under the section is a company, every director and every officer concerned in the management of the company shall be guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

The decision in question is contained in a judgment of the Court of Criminal Appeal in *R.* v. *Findlater*, 55 T.L.R. 330, delivered by Charles, J., on 19th December, 1938. The appellant was convicted of conspiring between January, 1936, and March, 1938, with six men to contravene s. 356 (1) of the Companies Act, 1929, and of causing and procuring certain men in January and February, 1938, to go from house to house offering shares for subscription or purchase to the public in contravention of the same section.

The appellant had become a full-time director in November, 1936, of Cucklington Mushrooms, Ltd., at a salary of £750 per year and £200 for expenses. He then found that the company was deriving its finance from the sale of "units" by canvassers sent out by a Mr. Mendoza and a Mr. Naar, who were directors of Oliver Berkeley, Ltd., the sole business of which was to raise finance for Cucklington Mushrooms, Ltd. It should be added that Oliver Berkeley, Ltd., took at first 50 per cent. of the capital raised for its services, and later, on the appellant's intervention, took 40 per cent.

There was no doubt that the appellant had arranged for a form of insurance of the capital subscribed by the unit-holders, and signed letters forwarding certificates sold by the canvassers to the purchasers of units.

The units offered for sale were called founders' units, and, by the certificate called the founders' unit guarantee certificate, the company undertook (1) that for a period of twenty-one years it would plant mushroom beds and cultivate the same at the company's farms and that it would duly market the same at the best prevailing prices; (2) that for a period of twenty-one years it would pay to the certificate-holder profits proportionate to 50 per cent. of the net profits arising from the total sale of mushrooms marketed by the company, the said proportion to be based on the number of units issued by the company; (3) that the proportion of the annual profits payable to the holder of the certificate should not be less than 10 per cent. per annum of the total amount of money subscribed by the holder of this certificate; (4) the company would arrange for delivery to the certificate-holder of a capital sinking fund bond, to be issued by the Crown Life Insurance Company, or any other reputable insurance company, which bond should guarantee to the holder the return of the subscribed capital under the certificate, intact, at the expiration of twenty-one years; (5) the holder of the certificate should have the right to transfer the unit.

On behalf of the appellant it was argued that the founders' unit guarantee certificate was not a "share," and this contention was accepted. The question then arose whether the document was a debenture.

Charles, J., quoted from Mr. Justice Lindley's judgment in *British India Steam Navigation Company* v. *Inland Revenue Commissioners*, 7 Q.B.D. 165, at p. 172: "Now what the correct meaning of "debenture' is I do not know. I do not find anywhere any precise definition of it. We know that there are various kinds of instruments commonly called debentures. You may have mortgage debentures, which are charges of some kind on property. You may have debentures which are bonds; and, if this instrument were under seal, it would be a debenture of that kind. You may have a debenture which is nothing more than an acknowledgment of indebtedness." The founders' unit guarantee certificate, his lordship said, appeared to contain what was implicit in the widest definition of a debenture—namely, an acknowledgment of an existing debt. The company undertook to pay the premiums to a reputable insurance company which undertook to return the amount of subscribed capital with interest at the end of twenty-one years. Such premiums were to be paid annually, and by undertaking to pay these premiums the company took on itself a liability which was only consistent with an acknowledgment of an existing debt.

With regard to the argument that the debt, if any, was not an existing debt but referred to something payable in the future, Charles, J., quoted from the judgment of Sargant, L.J., in *Lemon* v. *Austin Friars Investment Trust Ltd.* [1926] Ch. 1, where he said: "But surely that is altogether to give the go-by to the common doctrine that you may have a debt which is '*debitum in praesenti solvendum in futuro*' and which not only may be payable in the future but may be payable on a contingency."

It was also argued that the appellant could not be said to have conspired to contravene s. 356 (1) of the Companies Act, 1929, because although he acquiesced in the system which had been adopted, he would not have done so had he known that such a system was unlawful. His lordship pointed out that ignorance of the law will not excuse from the consequence of guilt any person who has the capacity to understand the law. The appeal was dismissed.

The law on the availability of ignorance of the law as a defence to a criminal charge was correctly and clearly stated by the learned judge, and is well established by authority. In one case a jury returned a verdict of guilty of a charge of common nuisance by keeping a lottery, but recommended the prisoner to mercy because "perhaps he did not know he was acting contrary to law." It was held that this was a verdict for the Crown, ignorance of a statute being no excuse if the statute is violated (*per* Erle, C.J., in *R.* v. *Crawshaw* (1860), Bell C.C. 303).

There are, however, exceptional cases when a similar defence will prevail. In *Burns* v. *Nowell* (1880), 5 Q.B.D. 444, Baggallay, L.J., in dealing with a case in which there was some ground for believing that an offence under the Kidnapping Act, 1872, had continued after the passing of the Act, said: "But before a continuous act or proceeding, not originally unlawful, can be treated as unlawful by reason of the passing of an Act of Parliament by which it is in terms made so, a reasonable time must be allowed for its discontinuance; and though ignorance of the law may of itself be no excuse for the master of a vessel who may act in contravention of it, such ignorance may nevertheless be taken into account when it becomes necessary to consider the circumstances under which the act or proceeding alleged to be unlawful was continued and when and how it was discontinued, with a view to determine whether a reasonable time had elapsed without its being discontinued."

The defence is, however, more frequently raised in cases where it is possible to argue, not that the defendant was

ignorant of the law, but that he thought that he had a right to do the act charged, and that that state of mind precluded the existence of *mens rea* in the particular case. This, however, only applies either where *mens rea* is an actual ingredient of the offence (*R.* v. *Hall* (1828), 3 C. & P. 409), or where the statute expressly makes the claim of right a defence (Larceny Act, 1916, s. 1, and *R.* v. *Bernhardi* [1938] 2 K.B. 264). Neither of these contentions could succeed in a charge under s. 356 (1) of the Companies Act, 1929.

The Law Society.

SOME ASPECTS OF REFORM.

[CONTRIBUTED.]

THE pamphlet under this title, issued by The Associated Law Societies of Wales, deals with a question of interest and importance not only to members of The Law Society, but also to those members of the profession who are not members but are potential members.

Two matters are urged by the pamphlet, viz. :—

(1) Provincial solicitors should have equal representation with London solicitors on the Council.

(2) For the purposes of representation on the Council the provinces should be divided into constituencies, each returning one member to the Council, and that member should be elected by the votes of members practising in that constituency only.

When it is borne in mind that country members make up approximately three-fifths of the total membership of the Society, it seems difficult to find a reason for twenty-nine out of the fifty members of the Council being London members of the Society. And of the twenty-one country members, ten only (the extraordinary members of the Council) are necessarily country members, the remaining eleven being elected under a convention that has apparently been in force for some years. Under the Society's constitution it seems that the country members of the Council need not number more than ten.

It is surely an anomaly that the larger number of the members of the Society should thus be left without any defined right of representation, or, equally, that all the Council might be elected from country members.

In asking for equal representation of country members, not proportional, the pamphlet makes a claim that seems very difficult to deny. It is pointed out that arrangements could be made to enable country members of the Council to take their full share in the work of committees by selecting appropriate times for meetings, and that the proposal to reimburse members of the Council their expenses of attending meetings removes another deterrent to the acceptance of a seat on the Council, particularly affecting the country members.

Before considering the second matter urged for consideration, there is a further point of interest in the statement that London members have no local law society. The City of London Solicitors' Company has been overlooked, but for those practising outside the City the statement is true. And must not many London members have felt that their interests would have been considered more sympathetically and brought forward more forcefully if they were represented by a local law society than when their membership is merged in a large Society which must be swayed by the concerted efforts of strong local societies or unions of societies. Perhaps it is not too late for a local law society to be formed for London solicitors outside the City and inside the districts of the nearer country societies, not as an act of disloyalty to The Law Society, but merely to make the collective voice of the London members a little stronger.

The second matter urged by the pamphlet is a consequence of the first and obviously the boundaries of any constituency would need the most careful consideration. Changes of population, too, would have to be taken into account from time to time or "pocket boroughs" would grow up and it would be necessary to settle whether or no the practitioner in more than one constituency had a plurality of votes.

But the idea seems sound and the criticism of the present system of electing the Members of Council to some extent justified.

As things are, it will be generally agreed that "official candidates are invariably elected and any outsider has no possible hope of success," and that, it is submitted, is not a desirable state of affairs.

Whilst no reasonable person can object to the individual Members of the Council, is it proper that only those who are previously approved by the Council should stand a chance of election and that in voting for them members of the Society are casting their votes for candidates they have never heard of, except as the officially approved? Is it to be wondered at that if a poll for Members of the Council is held, many voting papers are not returned?

The Associated Law Societies of Wales have undoubtedly raised questions that demand replies, but it may well be thought that they have not gone far enough. The profession should be democratic, but its government is not; that of the Bar is. Why should the profession not follow the example of the Bar Council and provide that a proportion of the Members of the Council of The Law Society must consist of those who have been admitted for less than, say, ten years? As it is, the younger men are not on the Council at all unless as partners in large firms and, therefore, divorced from all knowledge of the worries and troubles of their smaller brethren. To take this suggestion further, why should not there be a definite place on the Council for representatives of the members not in practice for themselves but employed by the large firms or by the Government, local authorities or commercial concerns?

Company Law and Practice.

Some Cases on the Power to Alter the Articles.

THE subject which I am going to discuss this week is really an offshoot of one of those wide general propositions which can sometimes be resorted to in advising on company matters. The articles of a company can always be altered by a special resolution of the company, and in general it is true to say that the majority in number or value of the shareholders has the power to effect such alterations. This power is, however, restricted, since it has been laid down that every exercise of the power must be "*bona fide* for the benefit of the company as a whole": see per Lindley, L.J., in *Allen* v. *Gold Reefs of West Africa* [1900] 1 Ch. 656, at 671. One result of this restriction is, as we shall see, that a company may, in certain circumstances, be prevented from altering its articles by the addition of provisions which would have been unobjectionable if inserted in the original articles. Notwithstanding that the new provisions are unobjectionable in themselves, they may have been put forward for ulterior motives and not with a view to benefiting the company. If this is the case, then the court may interfere to prevent their adoption as part of the regulations of the company.

I not infrequently refer in these articles to those people who seek the benefits of limited liability without understanding or observing the limitations on matters other than their liability which this course involves. Among other things, they tend very easily to forget that they have brought into existence something which is endowed with a *persona*, and, consequently, questions of personal interest and gain overshadow questions concerning the good of the company considered as a separate

entity. Awakening very often comes when the persons who, for practical purposes, *are* the company, fall out among themselves. They then discover that in manœuvring in their quarrels they have to deal with a third party—the company. Its existence may spoil the moves of the combatants and the cases to which I am going to refer should serve as a warning to a majority which is trying to defeat a rival minority inside the framework of a company.

There is no objection in law to an article compelling members of a company in certain circumstances to sell their shares to other members. It was argued in *Borland's Trustee* v. *Steel Brothers & Co. Ltd.* [1901] 1 Ch. 279, that such an article was void as repugnant to absolute ownership or, alternatively, as tending to a perpetuity. It was further argued that it might be contrary to the bankruptcy law in a case where a member was compelled to sell his shares on becoming bankrupt. All these arguments were rejected by Farwell, J., though it is possible that something might be made of the bankruptcy point if it could be shown that the price to be paid for the shares was not a fair one or that all the members were not equally subject to the possible compulsion. The particular article in the case before the court gave to the directors of the company power at any time to give a notice to a holder of ordinary shares requiring him forthwith to transfer all or any of such shares. The articles also contained usual provisions as to the giving of transfer notices and it was provided that if within fourteen days of receiving a notice from the directors the recipient did not give a transfer notice in respect of the shares comprised in the notice he should be deemed to have done so and to have specified the par value of the shares as their fair value. I give an outline of these provisions as they are a good illustration of the sort of way in which articles of this kind are made to work. For our present purpose it is enough to note that such provisions are perfectly legitimate in themselves and can always safely be included in a draft of articles for a company about to be incorporated. If further assurance is wanted, there is the case of *Philips* v. *Manufacturers Securities*, 116 L.T. 290. In that case the article provided that if a member failed to comply with certain trade regulations he should sell his £1 shares for one shilling. The article was an original article of the company and it was held to be valid and effective.

Questions, however, arise when the article is not an original article, but is proposed to be added to the original articles by a special resolution of the company. Three cases arising out of somewhat similar circumstances and all occurring at about the same time fall to be considered in this respect. I will take them in chronological order. The first is *Brown* v. *British Abrasive Wheel Company, Ltd.* [1919] 1 Ch. 290. In that case the facts were as follows. The company was in need of further capital, and a majority of the shareholders were prepared to provide this capital if they could first buy up the minority. They tried to come to some agreement with the minority but failed to do so. They then proposed to pass a special resolution adopting an article under the terms of which they would be able, compulsorily, to buy up the shares held by the minority. The terms on which they were to do this were to be inserted in the article, but when the minority brought the matter before the court, they expressed themselves as ready to buy the shares on whatever other terms the court should think just. It is to be observed that the plaintiff, a member of the minority, did not impugn the *bona fides* of the directors. His case was that, in the circumstances, the proposed resolution was not going to be passed in the interests of the company as a whole. It was not, he said, in the interests of the company to pass an article enabling a majority of its shareholders to expropriate the minority. On this argument he succeeded, and the company and directors were restrained from convening or holding meetings to pass the proposed resolution. Astbury, J., treated the question as being " whether the enforcement of the proposed alteration on the minority is within the ordinary principles of justice and whether it is for the benefit of the company as a whole." The learned judge found it very difficult to follow how it could be just and equitable that a majority, on failing to purchase the shares of a minority by agreement, could take power to do so compulsorily—and, indeed, it is a difficulty which most people would feel. It was alleged, on behalf of the majority, that the proposal was for the benefit of the company which was in need of further capital and which might have to go into liquidation if it did not get it. The proposal, however, did nothing to ensure that the further capital would be forthcoming, and, taken by itself, it could hardly be said to be directed at increasing the company's prosperity.

The second case is *Sidebottom* v. *Kershaw, Leese and Company, Ltd.* [1920] 1 Ch. 154—a case which went to the Court of Appeal. The minority shareholders in this case carried on a business in competition with the company, and the majority had secured the passing of a special resolution for the adoption of a new article which was directed against the minority. It is important to see how this article was framed. It provided that " in every case where shares are held by a person who carries on any business which is in direct competition with the business of the company, or who is a director of any company carrying on such business, the directors may at any time give to such person notice requiring him forthwith to transfer all such shares . . ." with the usual ancillary provisions concerning the machinery of valuation and transfer. The minority brought an action for a declaration that the resolution adopting this article was invalid against them. The Court of Appeal refused to make such a declaration. The whole question for the court could be brought down, as Lord Sterndale, M.R., in his judgment, remarked, to a narrow question of fact : " When the directors of this company introduced this alteration giving power to buy up the shares of members who were in competing businesses did they do it *bona fide* for the benefit of the company or not ? " It is clear that it might be very desirable from the point of view of the company that competitors should be excluded from the ranks of its members, but this is not enough. The test is the state of mind of the persons contriving the alteration. Even if they introduced an alteration beneficial to the company, if this were done for personal motives, then the alteration could successfully be challenged.

The third case is *Dafen Tinplate Co. Ltd.* v. *Llanelly Steel Company* (1907) *Ltd.* [1920] 2 Ch. 124—another case where an alteration of the same kind was held invalid. The article which was introduced in order to give a majority power to expropriate shareholders was in a peculiar form, inasmuch as one shareholder (a company) was expressed to be exempted from its operation. There was, therefore, discrimination in favour of this one member, for, whereas every other member was liable to be deprived of his membership, the favoured one could not be pushed out unwillingly. The facts leading up to the alteration in the articles were these. The members of the company were chiefly companies and other persons engaged in the manufacture of tinplates, and there was an understanding (though nothing more) that they would buy all steel bars which they might require from the company. One member ceased to do this and transferred its custom elsewhere. Negotiations were then begun with the object of buying out the recalcitrant member, but these negotiations failed and the company thereupon introduced the new article with the object of acquiring that member's shares and of protecting the company against action by its members detrimental to its interests. The facts, therefore, are not unlike those in *Sidebottom* v. *Kershaw, Leese and Co. Ltd.*, *supra*, where it had been held that the introduction of a similar article designed to protect the company from competition by its members was valid. The difference between the two cases lies in the form of the article introduced. The

article in *Sidebottom's Case* was in general terms and could be applied against any member of the company; that in the *Dafen Tinplate Company's Case* contained an exception in favour of one member. Peterson, J., held in the latter case, that the resolutions went too far and were invalid. There were two grounds for his decision: first, that the exception in favour of one named member was invalid; and, secondly, that the article as a whole went further than was necessary in the interests of the company, and that therefore it could not be *bona fide* or genuinely for the benefit of the company as a whole. It is not easy to reconcile this latter ground with the decision of the Court of Appeal in *Sidebottom's Case*. That decision seems to adopt as the only test the *bona fides* of the persons responsible for bringing about the alteration. In the ordinary case, if the directors or other responsible persons have acted *bona fide*, then the court will assume that they are the best persons to decide and have decided that the alteration is for the benefit of the company. In the *Dafen Tinplate Company's Case* Peterson, J., acted on the footing that it was for the court to inquire whether the alteration could properly be said to be for the benefit of the company, thus usurping a function which, it is submitted, belongs on the authority of *Sidebottom's Case* in the Court of Appeal, to the company or its directors. The Court of Appeal has since reaffirmed the view expressed in *Sidebottom's Case* and disapproved certain *dicta* of Peterson, J., in the *Dafen Tinplate Company's Case*. It is now clear that the shareholders and not the court are the judges of whether an alteration in the articles is for the benefit of the company, subject, however, to this, that the court may interfere if the alteration is such as no reasonable man could regard it as being for the benefit of the company: *Shuttleworth* v. *Cox Brothers and Company (Maidenhead) Ltd.* [1927] 2 K.B. 9.

A Conveyancer's Diary.

[CONTRIBUTED.]

Date of Completion.

IN contracts for the sale of real property it is usual to fix a date for completion. At law this date would be binding on the parties, so that if one of them were ready to complete then and the other were not the latter would be liable to an action for breach of contract. Equity however, looking at the substance rather than the letter of the contract, regarded the time fixed for completion as a matter not to be strictly adhered to in general, and granted relief against breaches grounded merely upon this. The jurisdiction so exercised was akin to that exercised by courts of equity in relieving against forfeitures, and related not merely to stipulations as to date of completion but to other provisions as to time, for example the time for delivery of the abstract: *Roberts* v. *Berry* (1853), 3 De G.M. & G. 284. Hence it was said that in equity time in these matters was not "of the essence of the contract," and since the concurrent administration of law and equity the same rule has prevailed in law (see s. 41 of the Law of Property Act, 1925, re-enacting with verbal modifications s. 25 (7) of the Judicature Act, 1873).

The rule however is not without exceptions. The contract may expressly provide that the date fixed for completion is to be of the essence of the contract, and in that case it will be enforceable. In *Jamshed Khodaram Irani* v. *Burjorji Dhunjibhai* (1915), 32 T.L.R. 156, Lord Haldane said:—

> "The special jurisdiction of equity to disregard the letter of the contract in ascertaining what the parties to the contract were to be taken as having really and in substance intended as regards the time of its performance might be excluded by any plainly expressed stipulation. But to have that effect the language of the stipulation must show that the intention was to make the rights of the parties depend on the observance of the prescribed time limits in a fashion which was unmistakable."

Time may be of the essence of the contract not only by express stipulation but by the nature of the property or by surrounding circumstances showing the intention of the parties that the contract was to be completed within a limited time: *Roberts* v. *Berry*, *supra*. In *Tilley* v. *Thomas* (1867), 3 Ch. App. 61, a contract for the sale of a leasehold house for the purchaser's residence provided that possession should be given by a certain day, but when the day came the vendor, although able to give possession, could not show a good title. Subsequent proceedings for specific performance were dismissed on the ground that time must be regarded as of the essence of the contract. The mere fact, however, that a purchaser is to be given possession on the date fixed for completion will not make time of the essence of the contract if the contract contains a certain common condition. In *Webb* v. *Hughes* (1870), L.R. 10 Eq. 281, the purchaser was entitled to possession on completion, but there was a provision in the agreement that if from any cause whatever the purchase should not be completed on the date fixed the purchaser should pay interest on the purchase money until the completion. It was held that time was not of the essence of the contract, since the agreement itself contemplated the possibility of postponement of completion. The General Conditions of The Law Society, which are nowadays incorporated in so many contracts, contain a provision (clause 7) very similar to that in *Webb* v. *Hughes*, and the statutory conditions of sale which are deemed to be incorporated in contracts for sale of land by correspondence by s. 46 of the Law of Property Act, 1925, also include a similar clause (No. 4 (1)). A purchaser therefore, who requires possession positively on the date fixed for completion, would do well to stipulate in so many words that time is to be of the essence.

Patrick v. *Milner and Scoles* (1877), 46 L.J.Q.B. 537, was a case of the sale of a contingent reversion, and, according to Lopes, J., *prima facie*, in this type of sale time would be of the essence of the contract unless there was something in the contract to show the contrary. There was a condition similar to the one in *Webb* v. *Hughes*, and the decision in that case was followed.

Another class of case where time is regarded as being of the essence of the contract is the sale of a public-house. In *Cowles* v. *Gale* (1871), 7 Ch. App. 12, the executors of a deceased person contracted to sell a public-house to which the usual licence was attached. On the day fixed for completion the purchaser was informed that the licence had not been transferred into the names of the executors, who were not therefore themselves in a position to transfer it, and the purchaser refused to go on with the matter. A bill for specific performance filed by the executors was dismissed. "In the case of a sale of a public-house," said James, L.J., "the purchaser buys it for the purpose of carrying it on and it would be ruinous to him if he were kept out of it. I therefore agree with what the Master of the Rolls said in *Day* v. *Luhke* (1868), L.R. 5 Eq. 336, that in the sale of a public-house as a going concern time is of the essence of the contract. In the present case, the 16th November, 1870, was fixed for the completion of the purchase and the vendors were bound to show that they were in a position on that day to hand over to the purchaser a licence under which he could lawfully carry on the business of a publican. On that day, beyond all question, they had no such licence to hand over to him."

If a contract fixes no date for completion it will, nevertheless, be perfectly valid and will be construed on the footing that completion is to take place within a reasonable time: *Gray* v. *Smith* (1889), 43 Ch. D. 208.

The question remains as to what is the remedy of a party to a contract in which time is not of the essence or in which no time is fixed for completion when the other party fails to complete or does not proceed with proper diligence. The

answer is that the party wishing to enforce the contract may make time of the essence by giving a notice to the other fixing a reasonable time within which the contract must be completed: *Taylor* v. *Brown*, 2 Beav. 180; *King* v. *Wilson*, 6 Beav. 124. The circumstances in which such a notice can properly be given are stated by Fry, J., in *Green* v. *Sevin* (1879), 13 Ch. D. 589, as follows:—

> "It is to be observed that the contract for purchase had limited no time for completion, and that, therefore, according to the rule in this country, each party was entitled to a reasonable time for doing the various acts which he had to do. What right then had one party to limit a particular time within which an act was to be done by the other? It appears to me that he had no right so to do, unless there had been such delay on the part of the other contracting party as to render it fair that, if steps were not immediately taken to complete, the person giving the notice should be relieved from his contract."

The question what is a reasonable time to limit by the notice depends on the facts of the particular case and must be determined as at the date when the notice is given (*Crawford* v. *Toogood* (1879), 13 Ch. D. 153). In that case an option to purchase property had been exercised, but the abstract had not been delivered to the purchaser until a year later, though under the circumstances, Fry, J., thought the delay not unreasonable. After a further three months or thereabouts, during which letters were written by the vendor's solicitors which the purchaser's solicitors did not answer, the vendor gave the purchaser a written notice that unless the latter completed on a date about five weeks ahead the vendor would treat the contract as rescinded and that in that respect time should be deemed to be of the essence of the contract. It was held that the notice was not a reasonable one. At the time when it was given there were many things remaining to be done. The abstract was not very simple, requisitions would have to be made and answered, there might be rejoinders to the answers, the draft conveyance had to be prepared and approved, the engrossment to be done and the parties got together to execute it. Fry, J., thought five weeks was not a reasonable time to fix for the completion of all these steps.

In another case (*Smith* v. *Batsford* (1897), 76 L.T. 179) a ten days' notice was held to be sufficient when the title had been accepted, the terms of the draft conveyance agreed, and the only things to be done were the engrossing of the conveyance and fixing a day for completion.

In *Stickney* v. *Keeble* [1915] A.C. 386, a purchaser after the contractual date for completion gave first a three weeks' notice, and after its expiry a month's notice, with the object of making time of the essence. Both these notices, however, were waived, but later the purchaser gave a third notice that he would cancel the contract unless the vendors completed within fourteen days. The vendors failed to complete according to the notice, and the purchaser sued for return of his deposit. The House of Lords, reversing the Court of Appeal, held that he was entitled to succeed, the notice being a reasonable one. Lord Parker said that in considering whether the time limited was reasonable the court would consider all the circumstances, and that, while what remained to be done at the date of the notice was important, it was by no means the only relevant fact, but the fact that the purchaser had continually been pressing for completion, or had previously given similar notices which he had waived, or that it was specially important to him to obtain early completion, were equally relevant facts.

Mr. Cyril Helsby, M.I.Struct.E., M.Soc.C.E., will deliver an address on "A.R.P. Practice in Barcelona," to an evening meeting of members of The Incorporated Society of Auctioneers & Landed Property Agents, at 34, Queen's Gate, London, S.W.7, at 7.30 p.m., on Tuesday, 7th February. Admission cards are obtainable from the Secretary. Refreshments will be served, free of charge, from 6.45 p.m.

Landlord and Tenant Notebook.

Holding Over: The Terms.

In *Wembley Corporation* v. *Sherren* (1938), 83 Sol. J. 34, the more important of the issues of law was whether a notice under an option to determine could, on the construction of the lease, be given so as to expire during and not with a year of the tenancy. I dealt with this last week, and also made a fleeting reference to the other issue, which was whether the provision for the option, originally in a lease, became one of the terms of the tenancy created by holding over.

It is usual to express the position by saying that when a tenant holds over, all terms which are not inconsistent with a yearly tenancy are impliedly incorporated in the new contract. The law was last exhaustively reviewed in *Wedd* v. *Porter*, *infra*, which drew attention to the nature and limits of the presumption.

The frequency with which problems arise—and many have arisen in the present century—is due not only to the difficulty of deciding whether a particular provision is or is not consistent with a tenancy from year to year, but also, I think, to a little confusion about the nature of the evidence necessary to raise the presumption.

In *Digby* v. *Atkinson* (1815), 4 Camp. 175, when a tenant, holding over after the expiration of a twenty-one-year lease, but agreeing then to pay an increased rent, was held bound by repairing covenants contained in the expired lease, Lord Ellenborough put it in this way: "Where the tenant holds over after the expiration of the term, he impliedly holds subject to all the covenants of the lease applicable to his new situation," and went on to say that the advance in the rent made no difference.

The position was somewhat differently expressed by Lord Campbell, C.J., in *Hyatt* v. *Griffiths* (1851), 17 Q.B. 505, an action for trespass to land and goods. The plaintiff had held a lease of a farm for a term of four years which expired at Michaelmas, 1843. This lease provided that the tenant was to retain and sow 40 (out of 213) acres of arable land with wheat after its expiration, have standing thereof until the next year rent free, and the use of the premises for threshing until the 2nd February after the said term. In 1843 the plaintiff was still in occupation, paying the same rent as before, and on Ladyday of that year he gave notice to quit expiring at Michaelmas, when he left; returning, however, in October to sow 40 acres of wheat. The resultant crop was reaped and removed by the defendant, by the landlord's authority, and the action was thereupon commenced.

Erle, J., left it to the jury to infer *or not* from the facts proved that the plaintiff had become a yearly tenant with the benefit of the provision he invoked. They found in his favour, and in the Court of Queen's Bench, Campbell, C.J., said: "*If* such a term is not inconsistent with a tenancy from year to year it must be shown by *evidence* to have been annexed to such a tenancy. It appears that it was . . ."

The report does not mention what the evidence was, but the judgment makes it clear that the mere fact of occupation and payment of rent would not warrant the finding.

A judgment delivered in *Wyatt* v. *Cory* (1877), 36 L.T. 613, cannot, I think, be reconciled with the above. The original tenancy in this case was a yearly one, determinable by six months' notice, under which the tenant, the defendant in the action, undertook to do certain repairs. This tenancy determined with the landlord's life, but the tenant stayed on. He gave notice to quit in 1874, and subsequently left the premises in a dilapidated condition. The question was whether the covenant to repair was part of the second tenancy. Grove, J., said: "The tenant continued over, he paid the same rent, at the same periods, he gave the notice which was provided in the memorandum of the agreement," and accordingly that there was evidence before the official referee on which he could find for the plaintiff, as he had.

The authority invoked and applied in *Wembley Corporation* v. *Sherren* would favour *Wyatt* v. *Cory* on this point rather than *Hyatt* v. *Griffiths*. It is that of *Wedd* v. *Porter* [1916] 2 K.B. 91, C.A., in which, if the facts were unusual, the whole principle was carefully examined. The original lease was for fourteen years from 1878; and, indeed, as Bankes, L.J., observed, the difficulty of the case was created by the fact that all the persons who knew what really happened were dead. But from correspondence produced it was apparent that when the term expired in 1892 there were negotiations which went on till August, 1894, and that while some points were settled by compromise others were never agreed. But the tenants continued in occupation, and paid a rent which was less than that reserved by the old lease. The tenancy was at last terminated by a year's notice given by the landlord's executors in 1912 before selling the reversion to the plaintiff; the tenants, who included the executors of one of the original grantees, then claimed compensation, and the plaintiff took proceedings to enforce some very stringent covenants relating to repair and upkeep which had been contained in the 1878 lease.

The view which the Official Referee, who tried the case at first instance, held was that the law was as follows: If no agreement be reached when a tenant holds over, he does so on the terms of the original agreement. He therefore found for the plaintiff. The Divisional Court set this judgment aside, and was now upheld by the Court of Appeal.

The correct view, it was held, was that when the parties have agreed that the old terms are not to apply, but do not agree what terms, except as regards rental, are to apply, then there is a yearly tenancy at that rental and the other terms are those implied by law.

This authority is informative as far as it goes; but it does not cover the case of a tenant holding over at the same rent but without any negotiations at all; what the Scots law so eloquently—if I may say so—calls "tacit relocation," *Wedd* v. *Porter* gives us no guidance on the question whether occupation, payment and acceptance of rent *in themselves* warrant the inference that all terms not inconsistent with a yearly tenancy are annexed thereto in the absence of evidence the other way.

The same applies to other decisions recorded in the present century. *Morgan* v. *William Harrison Ltd.* [1907] 2 Ch. 137, C.A., illustrated the position when a tenancy at will is created on the expiration of a lease, deciding that it incorporated an arbitration clause. In *Cole* v. *Kelly* [1920] 2 K.B. 106, C.A., a new agreement for a quarterly tenancy was held to incorporate repairing covenants. But in both these cases there was some correspondence, and the reletting could not be considered "tacit." In *Re Leeds and Batley Breweries Ltd. and Bradbury's Lease, Bradbury* v. *Grimble & Co.* [1920] 2 Ch. 548, the ruling that an option to purchase was inconsistent with the terms of a yearly tenancy created by holding over was sufficient to decide the issue; but Peterson, J., did say "the result of the cases is, I think, that the tenant who holds over with the consent of the landlord holds upon the terms of the tenancy created by the lease so far as they are applicable to tenancy from year to year." This passage is important for present purposes in that it does not visualise the necessity for other evidence than that of occupation and acceptance of rent.

Hyatt v. *Griffiths*, *supra*, still seems inconsistent with the rule as usually formulated; possibly the explanation is that there was more evidence than the facts of occupation and payment of rent, and, indeed, a general examination of the authorities as well as one's knowledge of human affairs suggests that purely tacit relocation must be rare indeed. Generally something occurs when the first lease runs out, and I believe *Oakley* v. *Monck* (1866), L.R. 1 Ex. 159, when the tenant asked for a new lease and the landlord said there was no occasion for one, "you can go on from year to year," is fairly typical. While in that case the landlord, who had acquired the reversion during the term, was held not to be bound by an unusual term of which he was ignorant, Willes, J.'s, judgment does, I think, include a passage which represents the usual state of affairs: "What was the contract . . . and on what terms? The answer is simple; on such terms as were *mentioned*."

Our County Court Letter.

PESTS ON FARM LAND.

In a recent case at Stratford-on-Avon County Court (*Langton* v. *Walker*) the claim was for £10 as rent due on a field. The plaintiff's case was that in February, 1938, the defendant took the field for the 1938 season in order to grow a crop of sprouts. A deposit of £5 was paid, and the agreed balance of £50 was to be paid in two equal instalments—one in mid-summer and the other at Christmas, or when the crop was harvested. The defendant had paid £10 on account (making £15 in all) and the amount claimed was the balance due of the first instalment, viz., £25. The land was clean and in good order, and had grown a good crop of beans in 1937. No complaint of briars would have arisen, if the defendant had used the horse-hoe. The land was free of rabbits, but the plaintiff was not responsible for those coming from neighbouring land. The season had been dry, and the defendant was only one of many who had had to replant their crops. The defendant's case was, on his taking the field, the plaintiff had made representations (which amounted to warranties) that the land was free from pests. Six acres of sprouts were planted, but pigeons were so destructive that it became necessary to spend £14 for new plants and another £14 in replanting. Rabbits had cleared about one-and-a-half acres, and—as the plaintiff's sons had not done the horse-hoeing, as arranged—the defendant had had a man hoeing thistles for a fortnight. Only fifteen pots had been picked, and about 100 pots remained. The expense and loss to the defendant was about £70. His Honour Judge Kennedy, K.C., observed that a warranty as to freedom from pests was not usual in the case of farm land, and no such warranty had been given. The defendant was a fruit merchant, and, being inexperienced in market gardening, had taken insufficient care of the land. It was not the plaintiff's fault that the dry season had caused the crop to fail, and judgment was given in his favour, with costs. To save further proceedings, the amount of the judgment was altered, by consent, to £30 with costs on the £10 scale.

DISCOVERY OF INTESTATE'S ESTATE.

In a recent case at Kingston-on-Thames County Court (*In re Rush, deceased*) an application was made for the delivery up of documents and securities in the possession of one or all of the respondents. The applicant was the sister and administratrix of the deceased, who had died intestate in June, 1937, at the age of seventy-nine. For many years prior to her death, the deceased had carried on a newsagent's business in Coventry, where the respondents (who were nephews and nieces) also lived. Being in the same neighbourhood, the respondents had taken possession of certain assets, of which the custody should have been acquired by the applicant. Certain documents had been handed over, but the respondents had failed to comply with an order to file an affidavit of documents, and it was accordingly impossible to specify the applicant's exact rights. The actual amount in dispute was £100, and an account was required of the respondents' dealings with the assets—particularly a sum obtained from a building society on a mortgage of freehold property of the deceased. His Honour Judge Haydon, K.C., referred the matter to the Registrar for inquiry and account. Leave was granted to the applicant to serve notices asking for committal of the respondents—

on the ground of failure to comply with the order to file an affidavit of documents. The costs of the application, and also those of previous proceedings (so far as unpaid), were ordered to be charged against the share of one of the respondents whose husband was alleged to have taken an active part in the affairs of the deceased during her lifetime.

Reviews.

The Coal Act, 1938. By PETER G. ROBERTS, Barrister-at-Law, Inner Temple. 1938. Demy 8vo. pp. viii and (with Index) 324. London: Wildy & Sons. Price 7s. 6d.

This book is in effect divisible into three approximately equal parts. The first of them contains a useful explanatory introduction to the new legislation, the second consists of a reprint of the Coal Act, 1938, while the third sets out recent mining legislation from the Mines (Working Facilities and Support) Act, 1923, to the Coal (Registration of Ownership) Act, 1937, the amendments to the earlier statutes being clearly indicated. The writer has aimed at setting out the principles upon which some of the problems which may arise under the Act may be settled and has not attempted to deal at length with the details of such problems. The usefulness of the work to legal practitioners is impaired by the absence of the numerous forms and rules and orders which have been issued under the Acts of 1937 and 1938, and, above all, by the absence of authorities. But the work may well prove to be a useful book of reference to those engaged in the everyday management of coal mines and coal estates, whose needs the author has also had in mind.

Palmer's Company Precedents. Part III. Debentures and Debenture Stock. Fifteenth Edition, 1938. By ALFRED F. TOPHAM, LL.M., Bencher of Lincoln's Inn, one of His Majesty's Counsel, and A. M. R. TOPHAM, B.A., of Lincoln's Inn, Barrister-at-Law. Royal 8vo. pp. cx and (with Index) 1032. London: Stevens & Sons, Ltd. £2 15s. net.

With this volume the great trilogy is once more brought fully up to date; it may be that the law relating to debentures and debenture stock has suffered less change since the last edition than any other branch of company law, but the editors have not been content merely to insert such decided cases as bear on the topics discussed in this volume. Thus they have introduced a form of second debenture trust deed, a form for which there has long been a considerable need, and while it is done largely by reference to the existing form of trust deed (doubtless with a view to economy of space) it contains all that can be reasonably required to draft a second debenture trust deed.

It may be that the report of *Knightsbridge Estates Trust, Ltd.* v. *Byrne* [1938] Ch. 741 (now reported in the C.A. 55 T.L.R. 196) was too late for inclusion in this volume, but in view of what Luxmoore, J. (as he then was), has to say as to the meaning of the word "debenture," some reference to some report might have been desirable; while the case of *Re Anchor Line (Henderson Brothers), Ltd.* [1937] Ch. 487, should certainly have been referred to, as there must be many companies registered in England which have heritable and movable property in Scotland over which they give floating charges.

Books Received.

The Common Law. By LEONARD J. CLEGG. 1939. Crown 8vo. pp. 95. London: Heath Cranton, Ltd. 3s. 6d. net.

Tax Cases, Vol. XXI. Part IX. 1938. London: H.M. Stationery Office. 1s. net.

For Magistrates and Others. By LEO PAGE, of the Inner Temple, Barrister-at-Law. 1939. Crown 8vo. pp. (with Index) 288. London: Faber and Faber, Ltd. 7s. 6d. net.

Mercantile Law. By D. F. DE L'HOSTE RANKING, M.A., LL.D., ERNEST EVAN SPICER, F.C.A., and ERNEST C. PEGLER, F.C.A. Seventh Edition, 1939. Edited by C. A. SALES, LL.B., F.S.A.A., and W. W. BIGG, F.C.A., F.S.A.A. Demy 8vo. pp. li and (with Index) 552. London: H. F. L. (Publishers), Ltd. 10s 6d. net.

The Law of Torts. A Treatise on the Law of Civil Wrongs as it prevails in England and in India. By S. RAMASWAMY IYER, B.A., B.L., Advocate, High Court, Madras. Second Edition, 1938. Demy 8vo. pp. lxxxv and (with Index) 732. Madras: The Madras Law Journal Office. London, Birmingham, Liverpool, Manchester and Glasgow: The Solicitors' Law Stationery Society, Ltd. (sole selling agents for the British Isles). 20s. net.

Obituary.

MR. G. C. LEWIS.

Mr. Gerald Champion Lewis, M.A., LL.M., Barrister-at-Law, Recorder of West Bromwich, died at Cheltenham on Tuesday, 31st January, at the age of seventy-five. Mr. Lewis was called to the Bar by the Inner Temple in 1889, and practised on the Oxford Circuit. He was coroner for Staffordshire from 1906 until 1924, when he was appointed Recorder of West Bromwich. He had also been coroner for the County Borough of Smethwick from 1920 to 1924, and he was President of the Coroners' Society of England and Wales in 1917–18.

MR. J. F. N. LAWRENCE.

Mr. James Frederick Nathaniel Lawrence, M.A. Oxon, solicitor, of New Square, Lincoln's Inn, W.C., died in London on Monday, 30th January, at the age of sixty-five. Mr. Lawrence was admitted a solicitor in 1899.

MR. R. S. MIDDLETON.

Mr. Richard Stephenson Middleton, solicitor, senior partner in the firm of Messrs. Middleton & Co., of Sunderland, died on Saturday, 28th January, at the age of seventy. Mr. Middleton was admitted a solicitor in 1897.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Safeguarding of Solicitors' Papers in War-time.

Sir,—I would be pleased to have your guidance as to what duty a solicitor, whose offices are situate in London, owes to his clients for the safeguarding of their papers in the event of war.

Like many other solicitors, I have in my safe a number of wills, title deeds and agreements, and in my offices are many files, which to a great extent consist of papers which are the property of my clients. Ought I, in the event of war, to deposit them in a safe deposit, or return them to my clients, or send them into the country? If so, at what juncture should I do this? Should I wait for a formal declaration of war? Alternatively, should I write to my clients that, while I am pleased to hold their deeds and documents for them, I cannot guarantee or be held responsible for their safety in the event of war?

In short, could you let me know what you consider it would be reasonable to expect of a solicitor whose offices are situate in London?

Piccadilly, W.1. F. BASIL GUEDALLA.
31st January.

[It would be interesting to hear the views of other readers upon this important matter. Should any useful suggestions be forthcoming we will be glad to publish them.—ED., *Sol. J.*]

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Meaning of "Next."

Q. 3622. By a mortgage dated the 7th day of March, 1938, the principal and interest thereby secured is made repayable on the 31st day of March next. Is there any doubt but that the principal and interest were due on the 31st day of March, 1938?

A. We are unable to say there is no doubt about the construction. There may be other parts of the deed, which throw light on the question, and particularly the covenant, if any, as to payment of instalments of interest if the principal sum is not paid on the day appointed, and the actual day of execution, if not the day of the date of the deed, is important. In *Simner* v. *Watney* (1927), 27 T.L.R., in a lease dated 23rd December, the words "25th day of December next" were held to mean 25th of the same month, but the lease was actually executed in November, and the term ran from the preceding 29th September, and rent was payable on the four usual quarter days. In the old case of *Brown* v. *Smith*, 8 Dowling 867, direction in an award dated 13th October, that money was to be paid on the 28th October next, was held to mean the latter day in the same month, and there was a case of *Dawes' Charity* (1886), 30 Sol. J. 401, where a similar decision was given on a contract for sale or reversionary interest. The decisions appear to be authority for the proposition that *prima facie* the word "next" does not qualify the name of the month only, but the day and month together, and in the deed under consideration, that the words "31st March next" meant the first 31st day of March which arrived after the execution of the deed. It is, of course, open to either party to show that if the court came to a contrary interpretation on the face of the deed, that the deed did not show the intention of the parties, and rectification should be ordered.

Trusts for Sale—Wishes of Beneficiaries.

Q. 3623. A testator, after appointing X and Y to be the executors and trustees of his will, gave the whole of his property (subject to the payments of his debts, funeral and testamentary expenses) to his executors, upon trust to sell, call in and convert into money all such parts thereof as did not consist of money, and to divide the net proceeds of sale equally amongst seven named beneficiaries. Three of the latter desire certain freehold fields to be sold by public auction, whilst the other four desire them to be sold privately at the valuation agreed upon with the district valuer for probate purposes. The executors are neutral, but they desire to know: (1) whether the devise upon trust for sale implies that the executors must sell by public auction or whether they can, if they like, sell privately at either the agreed valuation for probate or at a valuation to be made by an independent valuer; and (2) whether the Law of Property Act, 1925, s. 26 (3) has any application to this case.

A. The trustees have full power at their discretion to sell by auction or private contract. The somewhat curiously expressed paragraph at the end of s. 26 (3) appears to exclude express trusts of sale, such as in the present case, unless the trust requires the trustees to consult the beneficiaries. If the four beneficiaries are directly or indirectly interested in the proposed sale by private contract at probate valuation, which seems likely to be the case, the trustees should, it is considered, take no notice of the request, unless they are independently advised that the property is not likely to realise a net sum in excess of the amount in question. It is always wise for trustees to take such independent advice.

Gas Cookers and Refrigerators.

Q. 3624. A, the owner of a large block of flats, has mortgaged these to B. There is nothing mentioned in the mortgage deed concerning fixtures. There are installed in the flats a large number of gas cookers and refrigerators, also the property of A. It is desired to know, in the event of A becoming bankrupt, whether these gas cookers and refrigerators could be claimed by the trustee in bankruptcy, or whether they are covered by the mortgage to B. We have referred to *Ex parte Barclay* (1856), 5 De G.M. & G. 403, from which it would appear that the articles are covered by the mortgage, and cannot be claimed by the trustee in bankruptcy. If, in your opinion, the trustee in bankruptcy can claim the articles mentioned, what steps ought B to take in order to safeguard his position?

A. The facts of this case appear to be governed by *Hobson* v. *Gorringe* [1897] 1 Ch. 183. The two kinds of apparatus, therefore, passed to B under the mortgage and could not be claimed by A's trustee in bankruptcy.

Whether under the Transitional Provisions of L.P.A., 1925, the Tenant for Life of a Mortgage Debt takes the Statutory Term.

Q. 3625. Prior to 1926, A conveyed Blackacre to B, in fee simple by way of mortgage. By his will dated 11th June, 1915, B appointed his daughters C and D and his son E executors and trustees and gave, devised and bequeathed all the residue of his estate both real and personal unto his trustees, upon trust to pay the net annual income arising therefrom to his wife F, during her life, and from and after her death he directed his trustees (*inter alia*) to stand possessed of the sum of £312 17s. then due and owing to him by A on mortgage of Blackacre upon trust for his daughter C, and he directed his trustees to transfer the same to her accordingly. B died on the 23rd November, 1916, and his will was proved on the 8th January, 1917, by C, D and E. B's widow F, survived her husband and received the net income from the residuary estate until her death on the 6th October, 1929. It is now desired to transfer the mortgage to C in accordance with the provisions contained in the will. In whom is the term of 3,000 years created by the Law of Property Act, 1925, in respect of the mortgage now vested? Is it vested in C, D and E, as the trustees of B's will or did it vest on the 1st January, 1926, in F, the life tenant and thus vest on her death in her personal representatives? Kindly refer us to the relevant authorities.

A. Law of Property Act, 1925, Sched. I, Pt. VII, para. 1, provides for the vesting of the statutory term in "the . . . mortgagee." Section 205 (1) (xvi), defines "mortgagee" as including "any person from time to time deriving title under the original mortgagee." On the death of B, the mortgage debt and the securities for the same (then the fee simple) vested in his personal representatives (C.A., 1881, s. 30 (1)); it thus follows that on 1st January, 1926, the term vested in those personal representatives as then being the persons deriving title under the original mortgagee. The tenant for life of the mortgage debt could not, therefore, have taken the term which is in C, D and E.

To-day and Yesterday.

LEGAL CALENDAR.

30 JANUARY.—On the 30th January, 1649, Charles I was executed in Whitehall. The street was filled with soldiers to master the people and keep them out of earshot of the scaffold. A spectator told how when the blow fell "there was such a groan by the thousands then present as I never heard before and desire I may never hear again." In these days when nations need above all authority which is not state worship and liberty which is not anarchy, the King's last speech has a deep import. Having declared that he had desired the people's freedom, he continued: "Their liberty and freedom consists in having of government those laws by which their life and their goods shall be most their own. It is not having share in government, sirs; that is nothing pertaining to them. A subject and a sovereign are clean different things."

31 JANUARY.—When Robert Keon and George Reynolds went out to fight a duel the latter very politely saluted his opponent with his hat in his hand and wished him a good morning. This civility cost him his life for at that moment Keon fired and shot him through the head. "A horrid murder!" cried Reynolds' second, whereupon Keon's brother cried: "If you don't like it, take that!" and snapped a pistol at him. Fortunately it failed to go off. On the 31st January, 1788, Keon was sentenced to death in the King's Bench in Dublin for murder.

1 FEBRUARY.—On the 1st February, 1621, Sir James Ley became Chief Justice of England. "The Lord Chancellor came and sat in the Court of King's Bench and Sir James Ley came betwixt two of the King's Serjeants to the Bar where the Lord Chancellor made a short speech to him of the King's favour and reasons in electing him to that place, and he, being at the Bar, answered thereto showing his thankfulness and endeavour in the due execution of his office. He then went into Court and had his patent delivered to him which was openly read."

2 FEBRUARY.—On the night of the 2nd February, 1775, five hundred of the soldiers of the Dublin garrison marched in regular form to the gaol of Newgate, there taking sledges and other implements of war with which they threatened to batter down the gates if some of their comrades legally committed for an outrage against the peace of the city were not instantly released. The gaoler remembering a similar outbreak by the troops some years before when they had executed a similar threat prudently released his prisoners.

3 FEBRUARY.—Such incidents were not unknown in England, for on the night of the 3rd February in the same year forty ruffians armed with cutlasses and pistols attacked the watch-house in Moorfields to rescue a prisoner. In this they succeeded after wounding the watchman, robbing the constables and almost demolishing the building. Though some of the assailants were soon afterwards arrested, we are told that "the gang was too numerous to be soon subdued."

4 FEBRUARY.—On the 4th February, 1879, Charles Peace, one of the most notorious and peculiar of English criminals, made his last appearance in public, when he was convicted of murder at the Leeds Assizes. He was now "a shabby wretched-looking old man looking as if all hope had left him, grey hair, closely cropped, cheeks hollow, lips pale, but the eyes steely, keen and restlessly watchful." His junior counsel afterwards recalled that he made no scenes, "but I heard him muttering imprecations when certain witnesses spoke to his having given utterance to vindictive sentiments towards the murdered man." Ruthless boldness in him mingled with religious cant, while his versatility ingeniously exploited in a lifetime of crime might well have led him to success in legitimate spheres.

5 FEBRUARY.—Henry Crabb Robinson died at 30, Russell Square, his home in London, on the 5th February, 1867, at the age of ninety-one.

THE WEEK'S PERSONALITY.

Early in 1867 Henry Crabb Robinson, then an old man of ninety-one, was talking with Mathew Arnold in the Athenæum, of which he was one of the earliest members. In the course of the conversation the younger man offered to send him a copy of his essays. "No, no," said Robinson, "I'll buy them. Don't throw them away upon an old fellow like me. I shall be dead in a fortnight," and so it came about. With his bodily health and mental faculties unimpaired almost to the last, he died. His fame rests on his achievements as one of the great diarists of England, but for fifteen years he was a practising member of the Bar. He was called at the Middle Temple in May, 1813, at the age of thirty-eight, and his first brief in August of that year brought forth from his friend, Charles Lamb, one of his aptest quotations, when he apostrophised it as "Thou great first cause, least understood." He determined to retire when his income amounted to £500 a year and he kept his resolve. He afterwards said that the two wisest acts of his life were joining the Bar and leaving it. A friend of all the great literary men of his time, his conversation was to Lamb "pure golden pippin." Walter Savage Landor described him as one "whom neither the profession of the law could make a rogue nor the study of metaphysics a driveller."

SIR ARTHUR UNDERHILL'S DEATH.

It is well that before death blotted out the living record of his memory, Sir Arthur Underhill was able to perpetuate, in a book, many of the varied impressions accumulated in it during his eight and eighty years. In 1850, when he was born, the unregenerate Court of Chancery, as Dickens drew it in "Bleak House," still flourished, root and branch. He saw it pass almost unrecognisable through decades of transformation and lived to play a leading part in the final revolution in the work of Lincoln's Inn in preparing the property legislation of 1925. In his young days the great county families could still keep free "from any taint of commerce and from any vocational career for keeping the wolf from the door, other than the Services, the Church and the Bar." Though himself the son of a prosperous Wolverhampton solicitor, he found the Bar to which he was called in 1872 still held austerely aloof from the other branch of the profession. Social intercourse was taboo. On circuit the use of a bus was forbidden to counsel lest they might meet attorneys. Sir Arthur Underhill used to recall a bar mess charge of "fraudulently contemplating riding in a bus," once made at Norwich.

REMEMBERED SCENES.

In his reminiscences, he recalled an otherwise forgotten incident which he himself witnessed during the great *Tichborne Case*, in the Queen's Bench. Several rows of seats sloped upwards towards the back of the court, the rearmost being reached by steps. One day, all the places being occupied, a lady of commanding appearance stood on the top step leading to the back row and clung there precariously. Soon a young and handsome junior, afterwards a distinguished judge, came in idly and stood just under her. She promptly sat on his shoulder and he had the greatest difficulty in disencumbering himself. Underhill, who was enthusiastically devoted to yachting, also had an amusing little story of an accident which befell his fellow yachtsman, Mr. Justice Channell, while they were both anchored at Falmouth. The judge was skilfully turning about in a little sailing dinghy when the skipper of a local steamer, anxious to show his passengers the distinguished lawyer in an unconventional moment, steered so close that his wash swamped the little craft. The judge, furiously angry, was fished out by the cause of his upset and landed dripping on the deck.

Notes of Cases.

Judicial Committee of the Privy Council.

Sreemati Radharani Dassya *v.* **Sreemati Brindarani Dasi.**

Lord Thankerton, Lord Romer and Sir George Rankin.
19th December, 1938.

HINDHU LAW—WIDOW'S ESTATE IN LATE HUSBAND'S PROPERTY—RELINQUISHMENT—ACCELERATION OF REVERSION—SONS REVERSIONERS—DEED RELEASING HER INTEREST IN DECEASED INFANT SON'S SHARE ENTERED INTO BETWEEN WIDOW AND ONE SON FOR BENEFIT OF ALL SONS—WHETHER DEED INVALID IN ABSENCE OF PROOF OF CONSENT OF ALL SONS.

Appeal from a decision of the High Court, Fort William, Bengal, affirming a decision of a subordinate judge at Dacca.

The plaintiffs were the representatives of the estate of one Matilal Das, who died in 1925. Matilal's father was the fourth son of one Madhusudan Das, who on his death had left his property to all his sons in equal shares, with provision for his widow. The youngest son having in 1865 died an infant and unmarried, his fifth share passed to his mother, Madhusudan's widow, for the estate of a Hindhu mother. In 1877 the widow entered into two agreements with the eldest son whereby he agreed to pay her a certain monthly sum, and she relinquished her interest in the youngest son's fifth share of the estate. The defendant, Brindarani Das, was the daughter and represented the estate of the second son who had died in 1878 and been succeeded by his widow, who had accordingly come into possession of a quarter of the estate which included a quarter of the deceased son's fifth share. The remaining three-quarters in each case were held by the three surviving brothers. The fourth son then transferred his share for value to the eldest son. In 1885 and 1896 respectively the third and eldest son died, and their mother succeeded them, thus acquiring a Hindhu mother's interest in three-quarters of the property, including three-quarters of the youngest son's fifth share. In 1918, the widow died, Matilal succeeding to her three-quarter share. His representatives now sued the defendants as representatives of the estate of the second son, claiming the quarter which they held of the deceased son's fifth share. They based their claim on the ground that the deed between the widow and her eldest son whereby she released her interest in that fifth share was invalid because there was no proof that the other three sons had consented to it. They accordingly claimed that, as the widow had never released her interest in that fifth share, the whole of it was vested in her at her death and that Matilal therefore succeeded to the whole of it, and was consequently entitled to the quarter of the fifth share held by the defendants through the second brother.

Sir GEORGE RANKIN, delivering the judgment of the board, said that the appellants contended *inter alia* that the deed of 1877 merely transferred to the eldest son the management of the deceased son's fifth share; that, if it transferred anything by way of title, it transferred, not her whole interest as a Hindhu woman, but a mere life estate in the English sense; and that it did not operate to accelerate the succession to the deceased youngest son's estate, because it was a transfer to the eldest son only, and in any case had not been shown to have been accepted by the remaining brothers. Their lordships agreed with the courts in India that the deed could not be construed as transferring a mere right of management or anything less than the widow's whole interest. The relinquishment by a Hindhu woman of her right to succeed under the Dayabhaga could not be effected by a transaction with one son which benefited him alone; but the law was expounded and applied in *Bhagwat Koer* v. *Dhanukdari Prashad Singh* (1919), L.R. 46 I.A. 259, at pp. 270. 271. Applying those principles, their lordships were not of opinion that the transaction of 1877 failed to operate as a relinquishment for want of proof of acceptance and consent by all the reversioners. (Their lordships having held in favour of the respondents also in the other matters raised, the appeal was dismissed.)

COUNSEL: *L. P. E. Pugh*, K.C., and *J. M. Parikh*, for the appellants; *J. M. Pringle*, for the respondents.

SOLICITORS: *Stanley Johnson & Allen; Hy. S. L. Polak and Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

In re **a Judgment Debtor (No. 2176 of 1938).** *Ex parte* **the Judgment Creditor** *v.* **The Judgment Debtor.**

Greene, M.R., Finlay and Luxmoore, L.JJ.
20th December, 1938.

BANKRUPTCY—FOREIGN JUDGMENT REGISTERED IN ENGLAND—BANKRUPTCY NOTICE FOUNDED THEREON—WHETHER VALID—BANKRUPTCY ACT, 1914 (4 & 5 Geo. 5, c. 59), s. 1 (9)—FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ACT, 1933 (23 Geo. 5, c. 13), ss. 2 (2), 6.

Appeal from Mr. Deputy-Registrar Mellor.

In June, 1937, a judgment against the debtor for a sum amounting to the equivalent of about £19,000, was delivered by a competent court in France. In July, 1938, the judgment was registered under the Foreign Judgments (Reciprocal Enforcement) Act, 1933, s. 2. In October, 1938, a bankruptcy notice founded on it was issued. Mr. Deputy-Registrar Mellor set it aside.

GREENE, M.R., allowing the creditor's appeal, said that it had been argued that under the 1933 Act, the creditor's only relief was by way of execution, whether execution strictly so called or execution in a looser sense, e.g., equitable execution by way of receivership or garnishee proceedings. Earlier Acts had dealt with judgments in courts of other parts of the United Kingdom and the British Dominions. The 1933 Act first introduced the system of registration in respect of judgments of Courts outside His Majesty's Dominions. It had been held that notwithstanding the generality of the words in s. 3 of the Judgments Extension Act, 1868, the words in s. 4 " in so far only as relates to execution under this Act " limited the effect of registration to execution, including receivership by way of equitable execution, and excluded a bankruptcy notice and a judgment summons under the Debtors Act, 1869 (*In re Watson* [1893] 1 Q.B. 21; and *In re a Bankruptcy Notice* [1898] 1 Q.B. 383). Apart from statute the only way of enforcing the judgment of a foreign court (including Scottish, Irish and Dominions courts) was by action. Even after the 1868 Act, the holder of a foreign judgment might bring such an action and if he obtained judgment in it, might start bankruptcy proceedings on the basis of it. The Administration of Justice Act, 1920, s. 9, provided for the enforcement in the United Kingdom of judgments obtained in the superior courts of the Dominions. It contained the same limitation as s. 4 of the 1868 Act, but again, bankruptcy proceedings were still open to the holder of a judgment covered by the Act if he chose to start proceedings on the judgment and to recover judgment. The 1933 Act was confined to judgments in the superior courts of any foreign country where His Majesty was satisfied that reciprocity existed and where by Order in Council he directed the Act to apply to that country. Such an Order had been made in the case of France. Comparing the language of s. 2 (2) of that Act with that of ss. 3 and 4 of the 1868 Act, it expressly gave the registered judgment for the purposes of execution the same force and effect as if it had originally been given in the registering court. There was no such express reference in the 1868 Act. Further, para. (*a*) and para. (*b*) of s. 2 (2) were dealing under separate lettering,

the one with execution alone and the other with proceedings generally. Again, para. (*d*) said that "the registering court shall have the same control over the execution of a registered judgment" (that being in substance s. 4 of the 1868 Act) but omitted the words which in s. 4 were held to have the limiting effect, i.e. "but in so far only as relates to execution under this Act." The language taken by itself included bankruptcy proceedings initiated by a bankruptcy notice or otherwise. This was confirmed by s. 6 of the 1933 Act under which where a judgment was registrable the only thing which the holder of the judgment was entitled to do was to register it and after registering it he obtained the rights which the Act expressly said followed on registration. If the debtor's argument were right the holder of a foreign judgment registrable under the Act could never enforce it in bankruptcy because by s. 6 he could not sue on it. The language of s. 2 was clear and could not be cut down by the implication of limiting words. The words "final judgment or final order," in s. 1 (9) of the Bankruptcy Act, 1914, by themselves extended only to a judgment or order of a court within the jurisdiction (i.e. in England the final judgment of an English court). But the 1933 Act placed the foreign judgment when registered in the same position as a final judgment of an English court for the purposes of a bankruptcy notice.

FINLAY, and LUXMOORE, L.JJ., agreed.

COUNSEL: *C. Salmon; D. Lowe.*

SOLICITORS: *Blount, Petre & Co.; Weldon & Edwards.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Poliakoff *v.* News Chronicle Ltd.

MacKinnon and Goddard, L.JJ. and Lewis, J.
31st January, 1939.

PRACTICE—LIBEL AND SLANDER—LIBEL ACTION—VERDICT FOR DEFENDANT—APPEAL ON GROUND OF ALLEGED MISDIRECTION — NO SUBSTANTIAL WRONG — R.S.C. ORD. XXXIX, r. 6.

Appeal from a decision of Lord Hewart, C.J.

In a libel action by the plaintiff against a newspaper, the only evidence called was on behalf of the plaintiff. The jury returned a verdict for the defendants adding, in reply to a question by Lord Hewart, C.J., that they considered the action should not have been brought. The plaintiff now applied for a new trial on the ground that there had been misdirection, that the words complained of were capable of a defamatory meaning, that there was no evidence on which the jury could find a verdict for the defendants and that they were bound to find a verdict for the plaintiff.

MACKINNON, L.J., dismissing the appeal, said that the plaintiff had been chiefly cross-examined to show that he had suffered little damage and that he had already been amply compensated, to such extent as he had suffered damage, by a judgment for 10,000 francs in the French courts and by £400 recovered from another English newspaper. At the trial the real contest was as to the measure of damages. The summing-up was open to the objection that the jury were given little or no guidance as to what amounted to defamation, most of it being devoted to the question of damages. The Chief Justice should have told the jury that they could not find for the defendants, but must give a verdict for the plaintiff for something. His lordship, however, did not doubt that the jury would thereupon have found a verdict for one farthing. If they had, no objection to the result of the trial could have been taken. If the Court of Appeal were sitting as umpires presiding over a game of litigation played by counsel it might have had to order a new trial. In *Levy* v. *Milne* (1827), 12 Moore, at p. 421, Best, C.J., said: "It is one of the most beautiful parts of our constitution, that a party cannot suffer from our error; but when the decision of one tribunal is erroneous, it may be corrected by another." What had happened in this case would then have been considered wrong, and the court would have had to correct it, but now the court did not give such a nice application to the rules of litigation. By Ord. XXXIX, r. 6: "A new trial shall not be granted on the ground of misdirection . . . unless, in the opinion of the Court of Appeal, some substantial wrong or miscarriage has been thereby occasioned . . ." His lordship was satisfied that if there had been any misdirection, it only resulted in the jury saying "Verdict for the defendants," instead of "Verdict for the plaintiffs for one farthing," or at the outside forty shillings. No substantial wrong or miscarriage had been occasioned. The appeal must be dismissed with costs.

GODDARD, L.J., and LEWIS, J. agreed.

COUNSEL: *Pritt*, K.C., and *C. Duveen; Birkett*, K.C., and *V. Holmes.*

SOLICITORS: *Windybank, Samuell & Lawrence; Lewis & Lewis.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Lowry *v.* Consolidated African Selection Trust Ltd.

Greene, M.R., Finlay and Luxmoore, L.JJ.
31st January and 1st February, 1939.

REVENUE—INCOME TAX—SHARES ISSUED BY COMPANY TO EMPLOYEES AT PAR—DIFFERENCE BETWEEN PAR AND MARKET VALUE—WHETHER ALLOWABLE AS DEDUCTION IN ASSESSING COMPANY'S PROFITS TO TAX.

Appeal from a decision of Macnaghten, J. (83 SOL. J. 57).

By a special resolution increasing the capital of the company in 1933 it was also resolved that 10,000 of the new ordinary shares of 5s. each should be reserved for issue to its employees as the directors should determine. In 1934 they determined accordingly to offer 6,000 of these to the employees at their nominal value, though, according to the London Stock Exchange quotations, they were then worth £2 3s. 9d. each. The employees were assessed to tax on the sum representing the difference between the par and the market value of the shares. The company contended that, in computing its profits for income tax purposes, a deduction should be made equal to the difference between the par and market value of the shares as being the amount foregone by it. Macnaghten, J., held that the deduction could not be made. The company appealed.

GREENE, M.R., allowing the appeal, said that had the company issued the shares to the public it could have obtained a premium which could have been used to pay current expenses or carried to reserve or given as remuneration to employees. When the company created the new shares it acquired the power to admit to membership such persons as subscribed for them. That was a valuable right in the exercise of which it could have brought money into its pocket by way of premium. Instead, it diverted to the pockets of its employees a cash profit which it would otherwise have obtained. The premiums had been used to remunerate the employees in whose hands it was liable to tax. The company had provided that remuneration out of a right belonging to itself, the right to issue the shares. The Crown contended that the company's argument involved the proposition that to forbear from making a profit was the same thing as incurring an expense. The argument did not involve that. There had gone to the company's employees to its own prejudice money's worth which it could have converted into money. The money value was received by them by way of remuneration and the company was entitled to deduct from its profits the amount so provided. *Usher's Wiltshire Brewery Co.* v. *Bruce* [1915] A.C. 433, applied. The company had not only forborne to make a profit, but had also done an active thing, remunerating its employees to its own financial prejudice by giving them a sum it could have had itself.

FINLAY and LUXMOORE, L.JJ., agreed.

COUNSEL: *Tucker*, K.C, and *Terence Donovan; The Solicitor-General* (Sir Terence O'Connor, K.C.) and *R. Hills.*

SOLICITORS: *Freshfields, Leese & Munns; Solicitor of Inland Revenue.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Appeals from County Courts.

Great Yarmouth Port and Haven Commissioners *v.* F. T. Everard & Sons Ltd.

Slesser, Clauson and Goddard, L.JJ. 9th December, 1938.

SHIPPING — HARBOURS — DUES—VESSELS ENTERING AND LEAVING—CARGO CARRYING SHIPS TOWING SAILING SHIPS IN AND OUT—LIABILITY.

Appeal from Great Yarmouth County Court.

The list of tolls payable to the Great Yarmouth Port and Haven Commissioners was as follows: "1. For every vessel entering into or departing from the haven (not being a vessel otherwise charged in this schedule for such entering or departing) [tolls from 4d. to 8d. per ton]. 2. For every vessel entering into or departing from the haven laden with coal only [tolls from 4d. to 6d. per ton]. (The above toll shall not be payable on any such vessel departing from the haven, and having paid the toll on entering therein). 3. For every other vessel (other than a vessel used for the purpose of towing vessels) entering into the haven for refuge only [tolls from 4d. to 6d. per ton]. For every steam vessel (other than a vessel used for the purpose of towing vessels) entering into the haven for the sole purpose of taking in bunker coal [4d. a ton]. . . . 7. For every vessel propelled by steam or other mechanical power entering or departing from the haven and towing vessels either into or out of the haven for each such entry or departure [3s. 4d. per ton]. . . . (This toll shall not be payable on any such vessel departing from the haven and having paid toll on entering therein.) 8. For every vessel whether propelled by steam or other mechanical power and used for the purpose of towing vessels entering into or departing from the haven for any other purpose than that of towing vessels for each such entry or departure, £1. (This toll shall not be payable on any such vessel departing from the haven and having paid the toll on entering therein.) 9. For every vessel whether propelled by steam or other mechanical power entering into or departing from the haven and used for the purpose of towing vessels for each year . . . £10. Provided that any such vessel having paid such yearly toll shall be exempt from any other toll in respect of such vessel for entering into or departing from the haven during such year whether engaged in towing vessels or not." The defendants owned several motor cargo vessels and coastal sailing vessels. The motor vessels often towed the sailing vessels in and out of port. The defendants contended that they were liable to dues only as cargo-carrying vessels. His Honour Judge Rowlands held that they were liable to towage dues under cl. 7.

SLESSER, L.J., dismissing the defendants' appeal, said that they had contended that the ships fell under cl. 1 and cl. 2. They had said that if the ships had paid toll for entering the haven they would be allowed to depart without further toll, and the mere fact that in departing they were towing vessels out did not take away that privilege. That argument was wrong. The Commissioners had an express power under cl. 7 which was unambiguous. But even if there was ambiguity, cl. 1 and cl. 2 did not exempt the defendants. If a ship went in as a ship not "used for the purpose of towing" the right given by the paragraph at the end of cl. 2 could only apply to it if departing in the same capacity. There were two classes of ships, those used for the purpose of towing and those not so used. "Used for the purpose of towing" meant "primarily used for the purpose of towing vessels." The case of tugs was intended to be covered by cl. 8, which meant that a tug when used for a purpose other than towing (e.g., coming in for bunkering) paid £1 in contradistinction to cl. 7, which dealt with every class of ship which was in fact towing, whether primarily used for towing or not. The distinction was between ships substantially used for towing (i.e., tugs) and ships not so used which fell within cl. 7. As to cl. 9, this was limited in its right to tugs. The phrase "used for the purpose of towing" has the same meaning as in cl. 3 and cl. 8. Here the ships for which towing was merely incidental and ancillary to their work as cargo boats could not take advantage of cl. 9.

CLAUSON and GODDARD, L.JJ., agreed.

COUNSEL: *H. Holman* and *E. Addis; Pilcher*, K.C., and *Arthur Hodgson.*

SOLICITORS: *Holman, Fenwick & Willan*, for *Wiltshire, Sons & Jordan*, of Great Yarmouth; *Botterell & Roche*, for *Chamberlin, Talbot & Bracey*, of Great Yarmouth.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Anglo-Continental Produce Co. Ltd.

Bennett, J. 21st December, 1938.

COMPANY—WINDING-UP PETITION—WHETHER "JUST AND EQUITABLE"—COMPANIES ACT, 1929 (19 & 20 Geo. 5, c. 23), s. 168 (6).

The Anglo-Continental Produce Co. Limited, a private company, was incorporated in 1898. Under its articles of association H.H. and W.R. were governing directors. By Art. 67 they were to be such till they vacated the office under Art. 63, and while retaining it they were to have authority to exercise all the powers vested in the directors generally, and all the other directors for the time being were to be under their control and bound to conform to their directions in regard to the company's business. By Art. 68, while they held the office of governing directors, they might from time to time appoint any other person or persons to be a director, and might define, limit or restrict his or their powers, and fix his or their remuneration and duties, and might at any time remove any director howsoever appointed, and might at any time convene a general meeting of the company. By Art. 69 if H.H. resigned his office under Art. 63 or died while he held it, he or the trustees of his will were to have the right to appoint a governing director in his place, the person so appointed exercising the powers vested in governing directors by Arts. 67 and 68. By Art. 109 the company was not to be voluntarily wound up for twelve years from 1906 for any reason other than that it was insolvent, without the written consent of W.R. while a governing director. The company was at first very prosperous, but from 1928 no dividend was paid on its ordinary shares, and from 1934 no dividend was paid on its preference shares. It was not insolvent, and a small profit was made in the last financial year. H.H. had resigned the office of governing director, but had appointed no one in his place. In 1938, at an extraordinary general meeting, a resolution was passed that the company be wound up, and the directors be directed to present a petition therefor. The majority, of whom H.H. was one, though substantial, was insufficient to pass a special resolution. A petition for compulsory winding up was consequently presented.

BENNETT, J., said that it was suggested that the court should make a compulsory order on the ground that it was "just and equitable that the company should be wound up," within the Companies Act, 1929, s. 168 (e), which gave the court jurisdiction to wind up without taking into consideration any of the matters referred to in the earlier sub-sections. The grounds suggested were (1) that for several years the company had suffered severe loss, (2) that no dividend had been paid on the ordinary shares since 1928, and on the preference shares since 1934, (3) that the majority of the

shareholders were anxious for a winding up, (4) that there was friction because W.R. claimed the right to exercise the powers which the articles conferred on him as governing director. The real reason why it was suggested that it was just and equitable to wind up the company was that the majority of the shareholders wanted to be repaid the money they had got tied up in it. The mere wish of a majority, not being a three-fourths majority, to be repaid was no ground for winding up the company on the ground that it was just and equitable to do so: *In re Langham Skating Rink Co.*, 5 Ch. D., at p. 685-6. More was required, as indicated in *Baird* v. *Lees* [1924] S.C., at p. 92. No case was cited where a winding-up order was made on the ground that it was just and equitable unless either some wrong had been done to the company and the voting power had been so used as to prevent the company from having its remedy in respect of it, or it was a case where the substratum of the company had gone, or it was impossible owing to the way the voting power was held and the feelings of the directors towards one another for the company's business to be carried on. The present circumstances did not fall within any of those cases. No wrong had been done to the company. So far as friction was concerned, W.R., on the true construction of the articles, had power to overrule the views of those now associated with him as directors. H.H., the largest shareholder, had power to appoint a governing director to act with him, and it was suggested that if he did so there would be friction with the person so appointed. No one could see the future with certainty, and a winding-up order should not be made because there was that possibility. The position might never arise. The petition must be dismissed with costs.

COUNSEL: *Romer*, K.C., and *J. Lindon*; *Evershed*, K.C., and *Hon. Denys Binkley*.

SOLICITORS: *Roche, Son & Neale*; *Timbrell, Deighton and Nichols*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Davis *v.* London Express Newspaper Ltd.

Lord Hewart, C.J., and a Special Jury.

18th November, 1938.

DEFAMATION—LIBEL—QUALIFIED PRIVILEGE—NEWSPAPER INFORMED OF IMPENDING FRAUD—CONSEQUENT INQUIRY BY NEWSPAPER—PUBLICATION BY REPORTER TO CHAIRMAN OF COMPANY IGNORANT OF FRAUD—WHETHER PRIVILEGED.

Action for damages for libel.

In October, 1936, the plaintiff, Davis, had 1,000 5s. shares in a company which had been formed to acquire mining rights in an area in North Wales, the volcanic ash in which was thought to contain gold. Davis gave to one, Martin, such information as he had about the company, which information consisted in the main of the reports of two mining engineers, who had taken many samples of the ash and of assays made on those samples by a well-known firm of assayers, which assays showed the property as being extremely rich in gold. Martin, having made his own inquiries about the company, bought the 1,000 shares from Davis, paying him £250, less 5 per cent. commission. Davis had heard of the shares through one M. L. Spiro, and his case was that he received from Spiro information on which he was entitled to take the view that he could properly advise his clients to buy £250 units in the syndicate which Spiro was forming to acquire the mining rights in question. In September, 1936, the company was formed with a capital of £100,000, divided into 400,000 5s. shares. Of these Davis received for his services the 1,000 shares which he sold to Martin. Davis did not know until the 3rd November, 1936, that all work on the mining property had on Spiro's instructions been stopped as early as June, 1936. Martin having visited the company's mining property and there seen one, Reid-Kellett, one of the engineers, wrote Davis a letter in which he said, *inter alia*, that he now knew that the representations which Davis had made to him, and on the strength of which he (Martin) had bought shares in the company and induced his friends to do the same, were false, and that very material facts had been suppressed. Davis brought this action for libel against the defendants on the ground that their chief reporter, one, Morton, had published Martin's letter, or a copy, to the chairman of the gold company, Major-General Duncan, and he (Davis) complained that the letter meant that he had been guilty of selling worthless shares on fraudulent representations. The defendants pleaded privilege and justification of the words in their natural and ordinary meaning. The circumstances in which Martin's letter came to be published to Duncan were, as disclosed by Morton's evidence, as follows: Reid-Kellett, who had been with Martin when he wrote the letter in question to Davis, wrote to the news editor of the *Daily Express*, referred to a "clever stunt" being engineered by share-pushers in North Wales, and intimated that articles which had previously appeared in that newspaper referring to the high gold-bearing properties of the company's property, were proving of assistance in furthering the frauds. The news-editor, at the end of October, 1936, handed Reid-Kellett's letter to Morton who called at the company's offices and was there told of the high indications of gold in the mining property. Morton then had an interview with Reid-Kellett in London, and heard from him that he (Reid-Kellett) and the other mining engineer, Mackenzie, being amazed at the favourable results shown by the first assays, had had a set of check assays made from further samples of ore, and that they had shown only the slightest traces of gold. Reid-Kellett informed Morton that the first samples which had yielded such favourable results must have been "doctored." Reid-Kellett also gave Morton a copy of the letter which Martin had written to Davis. On the 2nd November, 1936, Morton visited the chairman of the gold company, Major-General Duncan, at the offices of the company. General Duncan was much surprised when told of the second set of assays, and said to Morton that, if there were in fact no gold in the property, only his (the general's) friends would be the losers, as they were the people whom he had interested in the company. Morton thereupon showed General Duncan the copy of Martin's letter to Davis, by way of showing that not only the general's friends had invested in the venture. That was the publication complained of by the plaintiff. On the next day, the 3rd November, there was to be a general meeting of the gold company as a result of which the public were to be invited to subscribe fresh capital to the company. General Duncan told Morton that he would not allow any more capital to be raised for the company until the discrepancy between the two assay reports had been explained. At the close of the evidence, counsel for the defendants submitted that the plea of privilege succeeded.

LORD HEWART, C.J., said that, in the course of his inquiry, Morton had disclosed Martin's letter to the plaintiff simply and solely to the chairman of the company, which was an act done as being incidental to the inquiry. In his (his lordship's) opinion, the circumstances were such as to exhibit a privileged occasion. There being no evidence of malice, there was accordingly no case to go to the jury, and there must be judgment for the defendants.

COUNSEL: *R. F. Levy*, K.C.; *Elliot Gorst* and *D. J. Sheridan*, for the plaintiff; *G. O. Slade* and *W. E. Behrens*, for the defendants.

SOLICITORS: *Harold Shephard*; *Shirley Woolmer & Co*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Sifton *v.* Sifton.

Henn Collins, J. 15th and 16th December, 1938.

DIVORCE—DESERTION—HUSBAND'S PETITION—TEMPORARY SEPARATION BY AGREEMENT—RESPONDENT'S REFUSAL TO RESUME COHABITATION—ALLOWANCE CONTINUED TO RESPONDENT—QUESTION OF READINESS TO RECEIVE DESERTING SPOUSE BACK—EVIDENCE—ADULTERY DISCLOSED UNDER DISCRETION STATEMENT—AVAILABILITY TO RESPONDENT ON CROSS-PRAYER—MATRIMONIAL CAUSES RULES, 1937, r. 28 (5).

This was a husband's petition for dissolution of marriage on the ground of desertion. Answer by the wife denying desertion and pleading cruelty and adultery of the petitioner, with a cross-prayer for dissolution. The discretion of the court was sought by both parties.

HENN COLLINS, J., in giving judgment, said that the case originally came on as an undefended case. The husband was asking for the exercise of the discretion of the court, and he put in a discretion statement and deposed to adultery in the autumn of 1934. His case came on at a moment when the decision in a case of desertion on the question of adultery had not been reached, as it was shortly afterwards in *Herod* v. *Herod* (1938), 82 SOL. J. 665, and was adjourned accordingly. That case having been decided, the present one might have been disposed of at once, but for the fact that the wife had obtained leave to put in an answer, which answer included an allegation of adultery founded upon the petitioner's admission. When the case came on as a defended suit, it seemed to him (his lordship) at first that that evidence of adultery could not be available to the wife, but, having considered the authorities—*B.* v. *B. & G.* [1937] P. 1; 80 SOL. J. 637, and also the Matrimonial Causes Rules, 1937, r. 28 (5), he was of the opinion that the evidence was available to the respondent. Rule 28 (5) provided as follows: "Neither the fact that a discretion statement has been lodged nor the fact that the said notice has been given nor the contents of the discretion statement or notice shall be given as evidence against the party lodging or giving the same in any matrimonial cause or matter except when that party has put in evidence in open court the discretion statement or the said notice or the contents thereof." In view of that rule, he thought that such evidence might be admitted, when placed before the court. In 1929, as a result of a quarrel, the parties took counsel of the wife's father, and, in the result, they, in terms, agreed for a separation for six months on certain conditions, ultimately reduced into writing. That agreement did not begin to operate immediately, because it took a month or so to close down the house, during which time they lived in the same house. The husband and wife having parted on the terms of the agreement, which specified the period at which it was to commence—namely, 2nd December, 1929—and which expired on 2nd May, 1930, provision was made that the wife was to receive an allowance of £5 per fortnight on the understanding that she lived with her mother, that she was to have custody of the child for three months, and that, at the expiration of that time, the husband was to have the option of the custody, and if, after three months, the husband took the custody of the child, the allowance was to be reduced by 30s. per fortnight. There was a further provision that both parties should have free access to the child at all times. Under that agreement, they lived apart. When the period of the agreement was coming to an end, the husband invited the wife to return, but she did not. Already she had expressed her intention to her mother of never returning, and, in fact, she never had returned. The husband, however, continued to pay the allowance, as he said—and he (his lordship) believed him—that he did not wish to see the mother of his child in want. His lordship then referred to a letter received by the husband from the wife in June, 1932, in which she wrote that she must ask him to stop asking her to share life with him for the future. (His lordship then referred to meetings and negotiations between the parties continuing into the year 1937, and proceeded): The question to be decided was whether the parties were, at all times after the expiration of the six months, or more particularly for the three years immediately preceding the presentation of the petition living apart by mutual consent. He had come to the conclusion that the position of the husband had been this: "My wife tells me she is in love with another man. She has so far declined my invitation to come back, and I think that the matter is now hopeless. I do not think that she will come back." He (his lordship) doubted whether, in those circumstances, the husband expected, or really wanted, her to come back, and he had had to consider what effect that had on the question of desertion. He thought that, assuming that the wife's departure from the home could not be justified, in those circumstances, the wife had no justification, when the terms of the agreement ran out, for remaining away from the home. In the words of Scrutton, L.J., in *Bowron* v. *Bowron* [1925] P. 187, at p. 195: "The intention [to desert] is presumed to continue, unless the husband proves genuine repentance and sincere and reasonable attempts to get his wife back." The husband in that case was in the position of the wife in the present case. He (his lordship) was inclined at one time to take the view that it was incumbent upon the husband, in the circumstances, to show that he was at all times during the statutory period up to the service of the petition ready and willing to receive his wife, but he was satisfied by the authorities that that was not so. When a spouse was deserted, he or she was in the position that the presumption was in his or her favour, and against the deserting spouse, and it was not until some offer to return were made by the other side that the question arose whether or not that was an offer which ought, in all the circumstances, to be accepted. If it were true to say that the deserting spouse must at all times be ready and willing to receive back the husband or wife, as the case may be, *Herod* v. *Herod*, *supra*, could not have been decided as it was, because no court would hold that, when a man was living in adultery, as in the case of *Herod* v. *Herod*, *supra*, he was ready and willing that his wife should return. Subject, therefore, to the wife's answer to the question of desertion, he found that she was the deserting party. (His lordship then dealt with the allegations of cruelty in the answer, finding in favour of the husband.) The husband therefore was entitled to the prayer of his petition, subject to the question whether or not discretion should be exercised in his favour. His adultery was used by the wife in her answer as supporting her prayer for a decree in her favour. There, again, her prayer was subject to the discretion of the court being exercised in her favour in respect of the adultery which she had committed. He (his lordship) found it extremely difficult to decide which of the parties was entitled to a decree. If the husband obtained a decree, it would be most clearly a case where he would be required to make a substantial compassionate allowance. If, on the other hand, the wife obtained a decree, she would, no doubt, be entitled to support from him, and, therefore, as a practical question, it did not appear to matter very much which way the decision of the court went on any question of finance. The question was rather a question of the respective demerits of the two discretion statements. It was by no means easy to weigh them up, but he thought that the merits lay rather with the wife than with the husband, and, in the result, there would be a decree on the prayer of her answer, exercising the discretion of the court in her favour.

COUNSEL: *J. F. Compton-Miller*, for the husband petitioner; *H. D. Baskerville*, for the wife respondent.

SOLICITORS: *Church, Adams, Tatham & Co.*; *Turner & Co.*, for *S. J. Weaver*, Watford.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Societies.

The Law Society.

SPECIAL GENERAL MEETING.

A special general meeting of members of The Law Society was held at Bell Yard on the 27th January.

The President, Mr. W. W. GIBSON, summarised in his opening address the provisions of the Solicitors Bill, 1939. On the 8th July of last year, he said, a circular had been sent to every practising solicitor stating the steps which the Council had decided to take to check defalcation among solicitors. The plan had included several matters for which Parliamentary authority was required. Accordingly the Council had had a Bill prepared, which they hoped would be introduced into Parliament shortly. The Bill proposed to require every solicitor, when applying for his annual practising certificate, personally to make a declaration stating expressly that he had complied with the Solicitors Accounts Rules. Any false statement contained in that declaration would render him liable to disciplinary proceedings. Another proposal would enable the registrar to apply such part of the 15s. (out of the £1 renewal fee) as was not required for legal education, to such other purposes of the Solicitors Acts, 1932–1939, as the Council of The Law Society might think fit.

A further provision extended the cases in which a registrar had a discretion (subject to appeal to the Master of the Rolls) to refuse a practising certificate, and gave the registrar an additional discretion to issue a certificate subject to conditions instead of refusing an application. This provision would apply (*a*) where a solicitor had been invited by the Council to give an explanation of a matter affecting his conduct and had failed to give a sufficient and satisfactory one; (*b*) where an order had been made against him for a writ of attachment; (*c*) where a receiving order in bankruptcy had been made against him, or he had entered into a composition with his creditors or a deed of arrangement; and (*d*) where a judgment had been given against him which he had not satisfied. The Bill also proposed to provide that an adjudication in bankruptcy should effect an automatic suspension of a practising certificate until the certificate expired or the adjudication was annulled. At present the Council had a discretion to refuse to issue a certificate, but the solicitor might be adjudicated bankrupt soon after his current certificate had been issued, and he could continue to practise until it expired in the following November. Power was to be given to the registrar and, on appeal, to the Master of the Rolls to terminate a suspension, but so long as the suspension continued the solicitor was to be deemed an unqualified person under s. 43 of the Act of 1932.

The Council might also prohibit the taking of an articled clerk in any case in which there was a discretion to refuse to issue a practising certificate. If the solicitor in such a case already had an articled clerk, the Council would have power to discharge the articles. Power was also to be taken to prohibit a solicitor from employing an unqualified clerk who had been a party to the professional misconduct of a solicitor. This provision might sound, and indeed was, drastic, but experience had convinced the Council that it was necessary. The Council would also be empowered to appoint committees at least two-thirds of which must be members of the Council, and to delegate duties to committees and fix their numbers and term of office.

The Bill also extended qualifications for membership of The Law Society. Under the Charter, solicitors who were practising or had practised were eligible for membership. To fulfil this condition a solicitor must have obtained at least one practising certificate. Many solicitors on the Roll did not take out or require to take out a practising certificate, because they were employed as managing clerks on work which did not need a certificate. The Council saw no justification for excluding them from membership, and the Bill proposed that they should be made eligible.

NEW DISCIPLINARY POWERS.

Then followed three clauses which had been inserted at the request of the Disciplinary Committee. The first proposed to increase the maximum number of the committee from seven to nine. The second empowered the committee to impose a penalty in addition to striking a solicitor's name off the Roll or suspending him from practice, and to order him to pay the costs of the proceedings. Penalties recovered would be paid to the Treasury. By the Solicitors Rules (Disciplinary Rules), 1932, r. 2, the committee might, in any case where in their opinion no *primâ facie* case had been shown, dismiss the application without requiring the solicitor to answer the allegations. It had been the practice of the committee, on request, to make a formal order dismissing the application without hearing the applicant in support of his affidavit. The Court of Appeal had recently expressed doubts whether r. 2 was *intra vires*, and it was proposed to enact by the Bill that the rules might provide for the adoption of this practice.

The President recalled that in his address to the Provincial Meeting at Manchester last September, he had announced the decision of the Council that it was desirable to make rules to enforce local minimum scales of charges, provided that the rules contained proper safeguards. Draft rules had now been sent to the Master of the Rolls informally to ascertain whether he would be prepared to approve of them in principle. If his lordship indicated to the Council that he would be prepared to do so, the Council would publish the rules to the whole profession so that their views might be obtained.

At the last Provincial Meeting a resolution had been passed that members of the Council attending meetings should be paid their out-of-pocket expenses. Counsel's opinion was to be taken on whether the Council had power to make such payments out of the funds of the Society.

The meeting then discussed *in camerâ* two motions by Mr. C. L. Nordon.

Cardiff Incorporated Law Society.

ANNUAL DINNER.

The annual dinner of the Cardiff Incorporated Law Society was held at the Park Hotel, Cardiff, on the 20th January, when the President of the Society (Mr. L. H. Allen Pratt, LL.B.) took the chair. The Lord High Chancellor had accepted the Society's invitation to the dinner, but was prevented from journeying to Cardiff, and Lord Wright attended in his place. The principal guests were: The Right Hon. Lord Wright, The Lord Mayor of Cardiff (Alderman W. G. Howell, J.P.), Mr. R. Vaughan Williams, K.C. (Recorder of Cardiff), Mr. O. Temple Morris, K.C., M.P. (Recorder of Merthyr), His Honour Judge L. C. Thomas, Mr. W. Hugh Jones, K.C. (Stipendiary Magistrate), Mr. A. T. James, K.C. (Traffic Commissioner), Mr. Stanley Evans (Vice-Chairman, Glamorgan Quarter Sessions), Mr. Llewellyn Francis (District Registrar), Mr. D. J. Mervyn Paton (President, Llanelly Law Society), Mr. David Rees (President, Pontypridd Law Society), Mr. A. G. S. Batchelor (President, Monmouthshire Law Society), Mr. Aneurin Jones (President, Merthyr and Aberdare Law Society), Mr. J. Rhys Morgan (President, Bridgend Law Society), Mr. E. C. W. Owen (President, South Wales and Monmouthshire Society of Chartered Accountants), Mr. Arthur B. Watts (President, Incorporated Accountants' South Wales and Monmouthshire District Society), Major G. J. Morley Peel (President, Insurance Institute of Cardiff), Mr. C. S. Goodfellow (Vice-President, Cardiff Law Society), Mr. T. E. Hammond (President, Cardiff Medical Society), Principal J. F. Rees, University College, Cardiff, Mr. H. F. Baker (President, Cardiff Chamber of Commerce), Mr. Idwal Williams (Chairman, Cardiff Shipowners' Association), Rev. D. J. Thomas (Rector of Canton) and Mr. A. M. Ingledew (Past President, Cardiff Law Society).

In proposing the toast of "the Society," Lord Wright referred to his several visits to Cardiff and Swansea, while on circuit, and the help and service which the profession had always accorded him when called upon.

Lawyers were a body of men with a common ambition, purpose, and sense of duty. He admired very much what they were doing under the Poor Persons Act. A great many cases of this kind were brought forward at present, and they all entailed considerable effort from solicitors. In the House of Lords, recently, he and his colleagues spent three days over a most important poor person's case, in which they raked up and stirred the entrails of the law in order to discuss common employment.

The law in this country had the advantage that the judges themselves had "been through the mill," having graduated from the Bar. A judge could thus appreciate the difficulties of counsel who appeared before him and be guided accordingly.

The common law was one of the country's finest virtues. It followed the principle of human friendship and the importance of the individual and his rights. No doubt as society developed and the world became more complex there must be a certain amount of regimentation in ordinary affairs. They were all liable to be run in for exceeding the speed limit, but, although that was happening it was not inconsistent with human friendship, for it was for the benefit of the community as a whole. We did not have concentration camps or secret police, and this fortunate state of affairs must be maintained.

The President, Mr. L. H. Allen Pratt, in responding to the toast, expressed the regret of the members that the Lord High Chancellor was prevented from attending, but welcomed Lord Wright in his place.

He recalled the occasions when Lord Wright visited Cardiff as Judge of Assize, and referred to a prosecution which took place before his lordship, which occupied his time for over a week and resulted in the conviction of a local shipowner. As a member of the highest legislative assembly in the land, Lord Wright had, perhaps, an advantage in that, whilst women had forced their way into the House of Commons and had invaded professions, in the exalted atmosphere of the House of Lords the presence of woman was only tolerated on ceremonial occasions, and this purely for decorative purposes.

Mr. Allen Pratt referred to Poor Persons Procedure, and to the injustice caused to those who were just above the poverty line in being compelled to issue divorce proceedings in London, and in being unable to have their suits heard at assizes where the petition was defended, or the discretion of the court asked for. He pointed out the hardship which was caused and urged that the same facilities for institution and trial of proceedings should be equally available as in the case of poor persons. He was interested to hear that his lordship had been engaged in the House of Lords in trying Poor Persons' cases. The general experience in House of Lords' Appeals was that, it was after the appeal had been decided that the parties became "poor persons."

He assured his lordship that the profession were heartily in sympathy with the rules against touting and undercutting, but a great many of them did not consider that these rules went far enough.

His lordship had referred to his varied duties as Master of the Rolls, and it might surprise the company that the Master of the Rolls had been *ex officio* a trustee of the Society for the Conversion of the Jews, a position due to his Court in Chancery Lane having been built on the site of an asylum for converted Jews.

One of the aims of the Society was to maintain a high standard in the profession, and it closely co-operated with the parent Society. The solicitor stood high in public esteem at the present time, and was not only legal adviser, but guide, philosopher and friend. He appealed to the law students present, and the younger members of the profession, to cultivate a pride of craftsmanship.

The Lord Mayor of Cardiff proposed the toast of "the Visitors," to which Principal J. F. Rees, M.A., of the University College, responded.

Parliamentary News.

Progress of Bills.

House of Commons.

Currency and Bank Notes Bill.
Read First Time. [1st February.
Czechoslovakia (Financial Assistance) Bill.
Read First Time. [1st February.
Ministry of Health Provisional Order (Blackburn) Bill.
Read First Time. [1st February.
Ministry of Health Provisional Order (Hastings) Bill.
Read First Time. [1st February.
Ministry of Health Provisional Order (Leyton) Bill.
Read First Time. [1st February.
Ministry of Health Provisional Order (Luton Extension) Bill.
Read First Time. [1st February.
Ministry of Health Provisional Order (South Staffordshire Joint Hospital District) Bill.
Read Second Time. [1st February.

Legal Notes and News.

Honours and Appointments.

The King has approved the appointment of Sir THOMAS INSKIP, K.C., as Secretary of State for Dominion Affairs, and of Mr. WILLIAM SHEPHERD MORRISON, K.C., as Chancellor of the Duchy of Lancaster.

The King has, on the recommendation of the Lord Chancellor, approved the appointment of Mr. JOHN HARRY WARTON PILCHER to be Chairman of the Court of Quarter Sessions of the County of Surrey, in accordance with the provisions of the Administration of Justice (Miscellaneous Provisions) Act, 1938.

The King has been graciously pleased to approve the appointment of SRI BUDUGURU SOMAYYA to be a Puisne Judge of the High Court of Judicature in Madras in the vacancy caused by the retirement of Mr. Justice C. Madhavan Nair.

The India Office announces that the King has been graciously pleased to approve the appointment of Mr. GEORGE HECTOR THOMAS as Chief Judge of the Oudh Chief Court, with effect from 23rd July, 1938, in the vacancy that has occurred consequent on the death of Sir Bisheshwar Nath Srivastava.

The Lord Chancellor has appointed Mr. JOHN TUDOR REES to be a County Court Judge, the appointment to date from the 6th February, and has made the following alterations in the County Court Circuits: From the 6th February, Judge LILLEY to be the Judge of Shoreditch only (Circuit No. 39); Judge TUDOR REES to be the Judge of Whitechapel (Circuit No. 27), and to sit as Additional Judge at Bow (instead of Judge David Davies, K.C.), and at Uxbridge; and from the 14th February Judge DAVID DAVIES, K.C., to sit as additional Judge at Clerkenwell (instead of Judge Hancock).

The Lord Chancellor has appointed Mr. HENRY MAKIN DRAPER to be the Registrar of Northampton, Daventry, Rugby, Wellingborough and Market Harborough County Courts and District Registrar in the District Registry of the High Court of Justice in Northampton as from the 30th January, 1939.

The Lord Chancellor has appointed Mr. HARRY LLOYD WILLIAMS to be the Registrar of Edmonton County Court as from the 30th January, 1939. Mr. Williams was admitted a solicitor in 1922.

The Secretary of State for Scotland has, on the nomination of the Lord Advocate, appointed Mr. JAMES BOWIE PATON, K.C., to be Principal Clerk of Justiciary with effect from 8th January, in succession to Mr. Alexander Rae, who is retiring. Mr. Paton's appointment is on a part-time basis.

Mr. G. D. JOHNSTON has been elected a Master of the Bench of the Inner Temple.

Notes.

Mr. Frank Medlicott, solicitor, of New Square, Lincoln's Inn, W.C., was last week elected Liberal National Member of Parliament for East Norfolk.

An address on the "Use and Abuse of Hire Purchase" is to be given at the hall of the Chartered Institute of Secretaries on 9th February by Mr. Cuthbert Greig, secretary of the Hire Purchase Trade Association.

Mr. L. L. Cohen, K.C., has been nominated by the committee for the captaincy of the Bar Golfing Society, in succession to Lord Justice Scott who retires by rule. The society's annual general meeting will be held in the Barristers' Refreshment Room, Lincoln's Inn Hall, on 9th February, at 4.30 p.m.

Mr. J. H. Morgan, K.C., has accepted an invitation from the University of Calcutta to deliver a series of lectures in Calcutta under the terms of the Tagore Trust. At the request of the Senate, the lectures will deal with "Federalism and the Government of India Act." Mr. Morgan, who was counsel to the Chamber of Princes from 1934 to 1937, has arranged to leave England for Calcutta early next week.

Mr. W. Gordon Davies, of Shrewsbury, was the guest of honour on Monday evening, 30th January, at a gathering of his associates and their families to celebrate his completion of a quarter of a century as managing clerk with Messrs. G. M. Mitchell and Roy Harris, solicitors, of Shrewsbury. As "a token of twenty-five years' most faithful service," Mr. Davies has received an inscribed gold hunter watch from Mr. Mitchell, whom he joined in 1914.

Mr. Justice Simonds made an order last Monday, confirming an alteration of the objects of the Solicitors' Managing Clerks' Association by including in them powers to contribute to benevolent purposes. Mr. J. H. Stamp, who appeared for the association, said that it was enabled to do this through having become entitled to a large benefaction under the will of the late Lord Riddell, which it proposed to use for the benefit of members, ex-members, and their families who were in distress through unemployment. His lordship said that he was very glad to hear that the association was in a position to undertake charitable work.

The next quarterly meeting of the Lawyers' Prayer Union is to be held in the Council Room of The Law Society (by kind permission) at 6.15 p.m., on Monday next, 6th February. The address will be given by the Rev. J. Russell Howden, B.D., Vicar of St. Andrew's, Holborn, his subject being "What is meant by Inspiration?" A hearty welcome is extended to all lawyers and law students. The meeting (which closes at 7 p.m. sharp) will be preceded by tea at 5.45 p.m. Those wishing to learn more about this union (established in 1852) which now has a large and growing membership, should communicate with the Honorary Secretary, F. C. Coningsby, Tregarthen, Pine Walk, Carshalton Beeches, Surrey.

BAR COUNCIL ELECTION, 1939.

The election will be held in the week ending Saturday, 18th February. Voting papers will be sent to every Barrister whose professional address within the United Kingdom is given in the 1938 Law List, on or about 10th February. A Barrister, who has not a professional address, may obtain a voting paper upon his written or personal application to the Offices of the Council, 5 Stone Buildings, Lincoln's Inn, W.C.2. The following thirty-two candidates have been nominated to fill the twenty-four vacancies upon the General Council of the Bar: Sir Herbert Cunliffe, K.C., Mr. A. T. Miller, K.C., Mr. A. F. Topham, K.C., Mr. J. D. Cassels, K.C., Mr. H. B. Vaisey, K.C., Mr. St. John G. Micklethwait, K.C., Mr. J. Willoughby Jardine, K.C., Mr. Noel B. Goldie, K.C., M.P., Sir Walter Monckton, K.C., K.C.V.O., Mr. J. G. Trapnell, K.C., Mr. Richard O'Sullivan, K.C., Mr. K. S. Carpmael, K.C., Mr. C. R. R. Romer, K.C., Mr. W. Blake Odgers, K.C., Mr. W. Hanbury Aggs, Mr. J. W. M. Holmes, Mr. A. Andrewes Uthwatt, Mr. Albert Crew, Mr. J. H. Boraston, C.B., Mr. R. T. Monier-Williams, Mr. William Latey, M.B.E., Mr. E. Anthony Hawke, Mrs. Helena Normanton, Mr. G. P. Slade, Mr. Richard Elwes, Mr. R. G. Micklethwait, Mr. D. H. Robson, Mr. H. B. Taylor, Mr. E. Garth Moore, Mr. A. J. F. Wrottesley, Mr. E. Daly Lewis and Mr. David Renton.

MARRIAGE LAW REFORM.

The Lord Chancellor has appointed Sir William Graham-Harrison, K.C. (chairman), Mr. William Eric Beckett, Sir Grattan Bushe, Dr. Geoffrey Chevalier Cheshire, Mr. Marshall Millar Craig, Sir Oscar Follett Dowson, Mr. W. L. M. Dunlop, Mr. Henry Arthur Hollond, Mr. Richard Bush James, Sir Kenneth McIntyre Kemp, Sir Claud Schuster, K.C., Mr. Augustus Andrewes Uthwatt, and Sir Sylvanus Vivian to be a committee to consider:—

(1) The law relating to the celebration of marriages in the United Kingdom (*a*) where the marriage is not recognised as valid in the country of the nationality or domicile of each or either of the parties, with special reference to the Marriage with Foreigners Act, 1906, and (*b*) where the law of the country of nationality or domicile recognises polygamy;

(2) The form and procedure for the granting of consular certificates of no impediment by British consuls for the marriage of British subjects or British protected persons by the local law of foreign countries, when such certificates are required by that law, with particular reference to the Marriage with Foreigners Act, 1906;

(3) The position under the law of the United Kingdom with regard to the recognition of marriages in cases where the personal law of the parties or either of them is inconsistent with the principles of English marriage law, with special reference to polygamous marriages;

Generally whether any alteration in the law with reference to the above matters is desirable, and to make recommendations.

Mr. H. Ward will act as secretary to the committee.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. I.	Mr. Justice Farwell.
	Mr.	Mr.	Mr.
Feb. 6	Jones	Ritchie	Hicks Beach
,, 7	Ritchie	Blaker	Andrews
,, 8	Blaker	More	Jones
,, 9	More	Hicks Beach	Ritchie
,, 10	Hicks Beach	Andrews	Blaker
,, 11	Andrews	Jones	More

	Group A.		Group B.	
	Mr. Justice Bennett. Non-Witness.	Mr. Justice Simonds. Witness.	Mr. Justice Crossman. Non-Witness.	Mr. Justice Morton. Witness.
	Mr.	Mr.	Mr.	Mr.
Feb. 6	Blaker	Jones	Andrews	More
,, 7	More	Ritchie	Jones	Hicks Beach
,, 8	Hicks Beach	Blaker	Ritchie	Andrews
,, 9	Andrews	More	Blaker	Jones
,, 10	Jones	Hicks Beach	More	Ritchie
,, 11	Ritchie	Andrews	Hicks Beach	Blaker

*The Registrar will be in Chambers on these days, also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June. 1932) 2%. Next London Stock Exchange Settlement, Thursday, 9th February 1939.

	Div. Months.	Middle Price 1 Feb 1939.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	104¼	3 16 9	3 13 5
Consols 2½%	JAJO	70	3 11 5	—
War Loan 3½% 1952 or after	JD	97⅜	3 11 11	—
Funding 4% Loan 1960-90	MN	107½	3 14 7	3 10 2
Funding 3% Loan 1959-69	AO	94	3 3 10	3 6 5
Funding 2¾% Loan 1952-57	JD	91½	3 0 1	3 7 8
Funding 2½% Loan 1956-61	AO	86½	2 18 0	3 7 11
Victory 4% Loan Av. life 21 years	MS	106⅜	3 14 11	3 10 10
Conversion 5% Loan 1944–64	MN	109¾	4 11 1	2 12 11
Conversion 3½% Loan 1961 or after	AO	97⅜	3 11 7	—
Conversion 3% Loan 1948-53	MS	96¾xd	3 2 0	3 5 11
Conversion 2½% Loan 1944-49	AO	95½	2 12 4	3 0 7
National Defence Loan 3% 1954-58	JJ	95	3 3 2	3 7 0
Local Loans 3% Stock 1912 or after	JAJO	82	3 13 2	—
Bank Stock	AO	324½	3 13 11	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	78½	3 10 1	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	84	3 11 5	—
India 4½% 1950-55	MN	109½	4 2 2	3 8 11
India 3½% 1931 or after	JAJO	88	3 19 7	—
India 3% 1948 or after	JAJO	74½	4 0 6	—
Sudan 4½% 1939-73 Av. life 27 years	FA	105	4 5 9	4 3 9
Sudan 4% 1974 Red. in part after 1950	MN	105½	3 15 10	3 8 8
Tanganyika 4% Guaranteed 1951-71	FA	104	3 16 11	3 11 9
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	102½	4 7 10	3 12 2
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	86	2 18 2	3 12 3
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	98½	4 1 3	4 1 8
Australia (Commonw'th) 3% 1955-58	AO	82⅝	3 12 9	4 6 5
*Canada 4% 1953-58	MS	106xd	3 15 6	3 9 7
*Natal 3% 1929-49	JJ	98	3 1 3	3 4 11
New South Wales 3½% 1930-50	JJ	92	3 16 1	4 8 9
New Zealand 3% 1945	AO	88½	3 7 10	5 5 8
Nigeria 4% 1963	AO	107	3 14 9	3 11 6
Queensland 3½% 1950-70	JJ	89½	3 18 3	4 2 1
*South Africa 3½% 1953-73	JD	99	3 10 8	3 11 0
Victoria 3½% 1929-49	AO	93½	3 14 10	4 5 0
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	80	3 15 0	—
Croydon 3% 1940–60	AO	92	3 5 3	3 10 11
*Essex County 3½% 1952-72	JD	99	3 10 8	3 11 0
Leeds 3% 1927 or after	JJ	79½	3 15 6	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	95	3 13 8	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	66½xd	3 15 2	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	78½xd	3 16 5	—
Manchester 3% 1941 or after	FA	80	3 15 0	—
Metropolitan Consd. 2½% 1920-49	MJSD	93xd	2 13 9	3 5 4
Metropolitan Water Board 3% "A" 1963-2003	AO	82	3 13 2	3 14 10
Do. do. 3% "B" 1934-2003	MS	82x	3 13 2	3 14 9
Do. do. 3% "E" 1953-73	JJ	92½	3 4 10	3 7 6
*Middlesex County Council 4% 1952-72	MN	105½	3 15 10	3 10 0
* Do. do. 4½% 1950-70	MN	110	4 1 10	3 9 4
Nottingham 3% Irredeemable	MN	80	3 15 0	—
Sheffield Corp. 3½% 1968	JJ	99½	3 10 4	3 10 7
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	97½	4 2 1	—
Gt. Western Rly. 4½% Debenture	JJ	106	4 4 11	—
Gt. Western Rly. 5% Debenture	JJ	115½	4 6 7	—
Gt. Western Rly. 5% Rent Charge	FA	111½	4 9 8	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	105½	4 14 9	—
Gt. Western Rly. 5% Preference	MA	74½	6 14 4	—
Southern Rly. 4% Debenture	JJ	96½	4 2 11	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	99	4 0 10	4 1 2
Southern Rly. 5% Guaranteed	MA	106½	4 13 11	—
Southern Rly. 5% Preference	MA	84½	5 18 4	—

* Not available to Trustees over par.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.